IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and the STATE OF WISCONSIN, Plaintiffs, v. NCR CORPORATION and SONOCO-U.S. MILLS, INC. (formerly known as U.S. Paper Mills Corp.), Defendants.	CIVIL ACTION NO.

CONSENT DECREE
FOR PERFORMANCE OF PHASE 1 OF THE REMEDIAL ACTION
IN OPERABLE UNITS 2-5 OF THE LOWER FOX RIVER AND GREEN BAY SITE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Wisconsin (the "State"), on behalf of the Wisconsin Department of Natural Resources ("WDNR"), filed a Complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The Plaintiffs' Complaint seeks, inter alia: (i) reimbursement of certain costs incurred by the United States and the State for response actions at Operable Unit 4 of the Lower Fox River and Green Bay Site (the "Site," as defined below) in northeastern Wisconsin, together with accrued interest; and (ii) performance of certain response work by the defendants at Operable Unit 4 of the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (the "NCP").

C. Sediments in the Lower Fox River and in Green Bay are contaminated with polychlorinated biphenyls ("PCBs") that were discharged in connection with the production and reprocessing of PCB-containing carbonless copy paper at multiple facilities in the Fox River Valley. The Site has been divided into five geographically-distinct operable units.

D. EPA and WDNR (collectively referred to herein as the "Response Agencies") jointly issued a Record of Decision selecting a remedy for Operable Units 1 and 2 at the Site in December 2002. The Response Agencies jointly issued a second Record of Decision selecting a remedy for Operable Units 3, 4, and 5 at the Site in June 2003. Those Records of Decision call

for dredging, dewatering, and upland landfill disposal of PCB-containing sediments currently located in certain areas at the Site.

E. The remedial action for Operable Unit 1 is being performed under a separate Consent Decree in the case captioned United States and the State of Wisconsin v. P.H. Glatfelter Co. and WTM I Co., Case No. 03-C-0949 (E.D. Wis.).

F. The remedial design for Operable Units 2-5 is being prepared under an administrative settlement agreement between the Response Agencies and NCR Corporation and Fort James Operating Company, captioned In re Lower Fox River and Green Bay Site, U.S. EPA Region 5, CERCLA Docket No. V-W-'04-C-781 (hereinafter the "Remedial Design Agreement," as defined below).

G. In implementing the Remedial Design Agreement, the parties performed additional pre-design sampling in particular areas of the Site. The results of that sampling indicate elevated concentrations of PCBs in sediments in certain areas of Operable Unit 4, along the west bank of the Lower Fox River, just downstream from the De Pere Dam (the "Phase 1 Project Area," as defined below).

H. The Response Agencies have determined that the remedial action for Operable Units 2-5 should be conducted in two phases to expedite the response in the Phase 1 Project Area. Phase 1 of the remedial action will address PCB-contaminated sediments in the Phase 1 Project Area. All remaining elements of the remedial action would be implemented in Phase 2.

I. The remedial designs for Phases 1 and 2 of the remedy will both be prepared under the existing Remedial Design Agreement. This Consent Decree provides for performance of Phase 1 of the remedial action by NCR Corporation and Sonoco-U.S. Mills, Inc. (the "Settling

Defendants"), in accordance with a Phase 1 remedial design that will be subject to review and approval by the Response Agencies.

J. The Settling Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Nothing in this Consent Decree is intended by the Parties to be, nor shall it be construed as, an admission of fact or law, an estoppel, or a waiver of defenses by Settling Defendants for any other purpose; provided, however, that nothing in this sentence shall be construed as limiting the Covenants By Settling Defendants in Section XX of this Consent Decree. The Parties agree that the provisions of this Consent Decree are not based on any views or assumptions regarding Settling Defendants' appropriate share of liability or costs relating to the Site. Participation in this Consent Decree by Settling Defendants is not intended by the Parties to be, and shall not be, an admission of any fact or opinion developed by the United States, the State, or any other person or entity.

K. Based on the information presently available to EPA and WDNR, EPA and WDNR believe that the Phase 1 Work (as defined below) will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, Phase 1 of the remedial action and the Phase 1 Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties as a good faith settlement of Plaintiffs' claims, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Phase 1 Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Phase 1 Work and shall condition

all contracts entered into hereunder upon performance of the Phase 1 Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Phase 1 Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Phase 1 Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Date of Entry" shall mean the date on which this Consent Decree is entered by the Court, after receipt and consideration of any public comments.

"Date of Lodging" shall mean the date on which this Consent Decree is lodged with the Court, before publication of a notice soliciting public comments.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments or agencies of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Force Majeure Event," for purposes of this Consent Decree, shall mean any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors or subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure Event and best efforts to address the effects of any potential Force Majeure Event (i) as it is occurring and (ii) following the potential Force Majeure Event, such that the delay is minimized to the greatest extent possible. Financial inability to complete the Phase 1 Work does not constitute a "Force Majeure Event."

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest

shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of Wisconsin, and the Settling Defendants.

"Phase 1 Project Area" shall mean that area of Operable Unit 4 of the Site delineated on Figure 1 attached to the SOW. For the purpose of this Consent Decree, the term "Phase 1 Project Area" shall also encompass the area delineated on any revision to Figure 1 to adjust the horizontal and/or vertical limits of the Phase 1 Project Area in accordance with Consent Decree Subparagraph 12.c and Sections I.C, II.A.1, and II.B.1 of the SOW.

"Phase 1 Remedial Design Activities" shall mean those activities to be undertaken by Settling Defendant NCR Corporation to conduct pre-design investigations and to develop the final plans and specifications for the Phase 1 Remedial Action pursuant to the Remedial Design Agreement and Sections II.A and IV of the SOW.

"Phase 1 Remedial Action" shall mean all activities to be undertaken to prepare and implement the Phase 1 Remedial Action Plan to be developed under the SOW, including: (i) performance of the Remedial Action Pre-Implementation Activities specified by Section II.B of the SOW; (ii) removal of sediment in the Phase 1 Project Area, as provided by the SOW; (iii) dewatering of the sediment that is removed; (iv) treatment of the water collected during the

dewatering process; (v) upland landfill disposal of the removed sediment after dewatering; (vi) sediment removal verification; and (vii) demobilization and site restoration.

"Phase 1 Work" shall mean the Phase 1 Remedial Action and all other activities that the Settling Defendants are required to perform under this Consent Decree, except for the Phase 1 Remedial Design Activities and those activities required by Section XXIII (Retention of Records).

"Plaintiffs" shall mean the United States and the State of Wisconsin.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq*. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the Record of Decision for Operable Units 3, 4, and 5 of the Site that was jointly issued by EPA and WDNR in June 2003. For the purpose of this Consent Decree, the terms "Record of Decision" and "ROD" shall also encompass any changes to the June 2003 ROD, including changes made by any future Explanation of Significant Differences or Record of Decision Amendment under 40 C.F.R. § 300.435(c)(2).

"Remedial Design Agreement" shall mean the administrative settlement agreement between the Response Agencies and NCR Corporation and Fort James Operating Company, captioned In re Lower Fox River and Green Bay Site, U.S. EPA Region 5, CERCLA Docket No. V-W-'04-C-781. A copy of the Remedial Design Agreement is attached as Appendix B to this Consent Decree.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean NCR Corporation and Sonoco-U.S. Mills, Inc. (formerly known as U.S. Paper Mills Corp.).

"Site" shall mean the Lower Fox River and Green Bay Site in Northeastern Wisconsin.

"Specified Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur after the Date of Lodging in connection with the Phase 1 Remedial Action, including in: (i) reviewing or developing Phase 1 Remedial Action plans, reports and submittals; (ii) overseeing or verifying the Phase 1 Remedial Action; or (iii) implementing, overseeing, or enforcing this Consent Decree. The "Specified Future Response Costs" shall include, but shall not be limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section VIII (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Section XIII, and Paragraph 77 of Section XIX.

"State" shall mean the State of Wisconsin.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Phase 1 Remedial Design Activities and the Phase 1 Work, as set forth in Appendix A to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Phase 1 Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean: (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous substance" under Wis. Stat. § 292.01.

"WDOJ" shall mean the Wisconsin Department of Justice and any successor departments or agencies of the State.

"WNDR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

V. GENERAL PROVISIONS

5. Objectives of the Parties.

a. The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment by the design and implementation of certain response activities at the Site – referenced herein as the Phase 1 Work – by the Settling Defendants, to reimburse all Specified Future Response Costs, and to resolve claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

b. The Phase I Remedial Design Activities include all response activities to be performed under the Remedial Design Agreement and Paragraph 9 of this Consent Decree to design the Phase 1 Remedial Action and to prepare for performance of the Phase 1 Work. The Phase 1 Work to be performed under this Consent Decree encompasses all the response activities to be undertaken to implement the Phase 1 Remedial Action in accordance with the SOW, including performance of certain pre-implementation activities specified by the SOW, removal and dewatering of contaminated sediments in the Phase 1 Project Area, and upland landfill disposal of the dewatered sediments. The Phase 1 Work does not encompass certain other response activities in the Phase 1 Project Area that will be required as part of Phase 2 of the remedial action for Operable Units 2-5, such as long-term operation and maintenance, institutional controls, long-term monitoring, and periodic reviews of the remedial action required by CERCLA Section 121(c) and any applicable regulations.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Phase 1 Remedial Design Activities and the Phase 1 Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by the Response Agencies pursuant to this Consent Decree. Settling Defendants shall also reimburse EPA and the State for Specified Future Response Costs, as provided by this Consent Decree.

b. Settling Defendant NCR Corporation shall perform the Phase 1 Remedial Design Activities in accordance with Paragraph 9 of this Consent Decree.

c. The obligations of Settling Defendants to finance and perform the Phase 1 Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendant shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Phase 1 Work conducted entirely on-site

(i.e., within the areal extent of contamination at the Site or in very close proximity to the contamination at the Site and necessary for implementation of the Phase 1 Work). Where any portion of the Phase 1 Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVI (Force Majeure Events) of this Consent Decree for any delay in the performance of the Phase 1 Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Phase 1 Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE PHASE 1 REMEDIAL DESIGN ACTIVITIES AND THE PHASE 1 WORK BY SETTLING DEFENDANTS

9. Phase 1 Remedial Design Activities.

a. The Phase 1 Remedial Design Activities (including pre-design investigations) shall be performed in accordance with the Remedial Design Agreement and Sections II.A and IV of the SOW that is attached as Appendix A to this Consent Decree. The Phase 1 Remedial Design Activities shall be deemed "Additional Work" to be performed under Paragraphs 25-27 of the Remedial Design Agreement. A copy of the Remedial Design Agreement is attached as Appendix B to the Consent Decree, the Remedial Design Agreement is incorporated herein by reference, and all requirements under the Remedial Design Agreement relating to Phase 1 Remedial Design Activities are hereby made enforceable requirements of this Consent Decree, but only as to Settling Defendant NCR Corporation.

b. The following plans and reports shall be submitted to the Response Agencies pursuant to the Remedial Design Agreement, the SOW, and this Paragraph 9: (i) a Pre-Design Plan; (ii) a Quality Assurance Project Plan; and (iii) a Sampling and Analysis Plan. Upon approval by the Response Agencies, all submittals required by the Remedial Design Agreement, the SOW, and this Paragraph 9 shall be incorporated into and become enforceable under this Consent Decree.

10. Selection of Supervising Contractor.

a. All Phase 1 Remedial Design Activities to be performed pursuant to Paragraph 9 of this Consent Decree shall be under the direction and supervision of the project coordinator and the contractors designated under the Remedial Design Agreement. All other work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Phase 1 Remedial Design Activities and Phase 1 Work by Settling Defendants), VII (Quality Assurance, Sampling and Data Analysis), and XIII (Emergency Response) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor that shall report to and be accountable to the Settling Defendants' Project Coordinator designated under this Consent Decree. The Supervising Contractor shall be subject to disapproval by the Response Agencies.

b. Within 45 days after the Date of Lodging, Settling Defendants shall notify the Response Agencies in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. The Response Agencies will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to the Response Agencies and must obtain an authorization to proceed from the Response Agencies before the

new Supervising Contractor performs, directs, or supervises any Phase 1 Work under this Consent Decree.

c. If the Response Agencies disapprove a proposed Supervising Contractor, the Response Agencies will notify Settling Defendants in writing. Settling Defendants shall submit to the Response Agencies a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of the Response Agencies' disapproval of the contractor previously proposed. The Response Agencies will provide written notice of the names of any contractors that they disapprove and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify the Response Agencies of the name of the contractor selected within 21 days of the Response Agencies' authorization to proceed.

d. If the Response Agencies fail to provide written notice of their authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the Response Agencies pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVI (Force Majeure Events).

11. Phase 1 Remedial Action.

a. Submission of Phase 1 Work Plans. The Settling Defendants shall submit the following work plans for the Phase 1 Remedial Action (which are collectively referred to herein as the "Phase 1 Work Plans") in accordance with the requirements and schedule set forth in the SOW: (i) the Phase 1 Remedial Action Plan; and (ii) any other plan(s) developed pursuant to the SOW. Upon approval by the Response Agencies, all Phase 1 Work Plans shall be incorporated into and become enforceable under this Consent Decree.

b. Performance of the Phase 1 Remedial Action. The Settling Defendants shall perform the Phase 1 Remedial Action in accordance with the requirements and schedules set forth in the ROD, the SOW, and the Phase 1 Work Plans.

12. Modification of the SOW or the Phase 1 Work Plans.

a. Subject to Subparagraph 12.c below, if the Response Agencies determine that modification to the work specified in the SOW and/or in Phase 1 Work Plans is necessary for performance of the Phase 1 Remedial Action, the Response Agencies may require that such modification be incorporated in the SOW and/or such Phase 1 Work Plans; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the Phase 1 Remedial Action.

b. For the purpose of this Paragraph 12 only, the "scope of the Phase 1 Remedial Action" is: (i) removal of sediment in the Phase 1 Project Area as provided by the SOW; (ii) dewatering of the sediment that is removed; (iii) treatment of the water collected during the dewatering process; (iv) upland landfill disposal of the removed sediment after dewatering; (v) sediment removal verification; and (vi) demobilization and site restoration. The "scope of the Phase 1 Remedial Action" may also include partial capping or supplemental capping in the Phase 1 Project Area after removal of the targeted sediments. As set forth in Sections I.C, II.A.1, and II.B.1 of the SOW, the Parties may agree to adjust the horizontal and/or vertical limits of the Phase 1 Project Area based on further analysis of recent sampling data, and any such agreed adjustment shall be memorialized in the Pre-Design Plan and/or the Phase 1 Remedial Action Plan approved by the Response Agencies. Any agreed adjustment to the horizontal and/or vertical limits of the Phase 1 Project Area shall be deemed "consistent with the scope of the Phase 1 Remedial Action." If the Response Agencies propose to enlarge the Phase

1 Project Area in the future, such enlargement shall not be considered "consistent with the scope of the Phase 1 Remedial Action" under this Consent Decree unless the Settling Defendants consent.

c. If Settling Defendants object to any modification determined by the Response Agencies to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XVII (Dispute Resolution), Paragraph 56 (record review). The SOW and/or the Phase 1 Work Plans shall be modified in accordance with final resolution of the dispute.

d. The Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in Phase 1 Work Plans in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit the Response Agencies' authority to require performance of further response actions as otherwise provided in this Consent Decree, or as required for Phase 2 of the remedial action in Operable Units 2-5.

13. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the Response Agencies' Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of

transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the selection of the Supervising Contractor. The Settling Defendants shall provide the information required by Subparagraph 13.a as soon as practicable after the selection of the Supervising Contract and before the Waste Material is actually shipped.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

14. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by the Response Agencies to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to the Response Agencies for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by the Response Agencies shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that the Response Agencies' personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition,

Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by the Response Agencies pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by the Response Agencies, Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by the Response Agencies. The Response Agencies may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by the Response Agencies.

15. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by the Response Agencies or their authorized representatives. Settling Defendants shall notify the Response Agencies not less than 15 days in advance of any sample collection activity unless shorter notice is agreed to by the Response Agencies. In addition, the Response Agencies shall have the right to take any additional samples that the Response Agencies deem necessary. Upon request, the Response Agencies shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Phase 1 Work.

16. Settling Defendants shall submit to the Response Agencies copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Phase 1 Project Area and/or the implementation of this Consent Decree unless the Response Agencies agree otherwise.

17. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

VIII. ACCESS TO PROPERTY

18. If any property where access is needed to implement this Consent Decree is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the Date of Lodging, provide the Plaintiffs and their representatives, including the Response Agencies and their contractors, with access at all reasonable times to such property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) monitoring the Phase 1 Work;

(2) verifying any data or information submitted to the Plaintiffs;

(3) conducting investigations relating to contamination at or near the Site;

(4) obtaining samples;

(5) assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) implementing the Phase 1 Work pursuant to the conditions set forth in Paragraph 77 of this Consent Decree;

(7) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXII (Access to Information);

(8) assessing Settling Defendants' compliance with this Consent Decree; and

(9) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted;

b. commencing on the Date of Lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree.

19. If any property where access is needed to implement this Consent Decree is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the Plaintiffs, on behalf of the Response Agencies, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 18.a of this Consent Decree; and

b. an agreement, enforceable by the Settling Defendants and the Plaintiffs, to abide by the obligations and restrictions established by Paragraph 18.b of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

20. For purposes of Paragraph 19 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access agreements required by Paragraphs 19.a or 19.b of this Consent Decree are not obtained within 45 days after the Date of Lodging, then Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 19 of this Consent Decree. The United States and the State may, as they deem appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States and the State, as Specified Future Response Costs, for all costs incurred, direct or indirect, by the United States or the State in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

21. If any property where access is needed to implement this Consent Decree is owned or controlled by the Plaintiffs, the Plaintiffs shall use best efforts to assist the Settling Defendants in securing necessary access.

22. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

23. Monthly Progress Reports.

a. In addition to any other requirement of this Consent Decree, starting with the first month after the Date of Lodging, Settling Defendants shall submit written Monthly Progress Reports to the Response Agencies that shall: (i) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (ii) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (iii) identify all Phase 1 Work Plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts or Pert charts; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Phase 1 Work, and a description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to the Phase 1 Work Plans or other schedules that Settling Defendants have proposed to the Response Agencies or that have been approved by the Response Agencies; and (vii) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken

in the next month. Settling Defendants shall submit these progress reports to the Response Agencies by the tenth day of every month following the Date of Lodging until the completion of all Phase 1 Work. If requested by the Response Agencies, Settling Defendants shall also provide briefings for the Response Agencies to discuss the progress of the Phase 1 Work.

b. The Settling Defendants shall notify the Response Agencies of any change in the schedule described in the Monthly Progress Report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

24. Phase 1 Final Report. Within 150 days after completion of all Phase 1 Work, the Settling Defendants shall submit for the Response Agencies' review and approval a Phase 1 Final Report summarizing the performance of the Phase 1 Work and the other actions taken to comply with this Consent Decree. The Phase 1 Final Report shall also include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Consent Decree, a listing of quantities and types of materials removed off-Site or handled on-Site, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

25. Release Reporting.

a. Upon the occurrence of any event during performance of the Phase 1 Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), Settling Defendants shall within 24 hours of the onset of such event orally notify the Response

Agencies' Project Coordinators. If the EPA Project Coordinator is not available, oral notification shall be given to the EPA Region 5 Emergency Response Section. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

b. Within 20 days of the onset of such an event, Settling Defendants shall furnish to the Response Agencies a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report to the Response Agencies setting forth all actions taken in response thereto.

26. Submission and Certification of Reports.

a. Settling Defendants (or Settling Defendant NCR Corporation, in the case of a document that is part of the Phase 1 Remedial Design Activities) shall submit two hard copies of all plans, reports, and data required by the SOW (including all of the Phase 1 Work Plans) to each of the Response Agencies in accordance with the schedules set forth in the SOW and such plans. At the same time, the Settling Defendants (or Settling Defendant NCR Corporation, as the case may be) shall submit an additional copy to each of the Response Agencies in electronic format.

b. All reports and other documents submitted by Settling Defendants to the Response Agencies (other than the Monthly Progress Reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants, such as the Settling Defendants' Project Coordinator. The Phase 1 Final Report shall also include the following certification signed by an authorized representative of the Settling Defendants, such as the

Settling Defendants' Project Coordinator:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Phase 1 Final Report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

X. RESPONSE AGENCIES' APPROVAL OF PLANS AND OTHER SUBMISSIONS

27. After review of any plan, report or other item which is required to be submitted for approval by the Response Agencies pursuant to this Consent Decree, the Response Agencies shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) modify the submission to cure the deficiencies; (iv) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (v) any combination of the above. However, the Response Agencies shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Phase 1 Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

28. In the event of approval, approval upon conditions, or modification by the Response Agencies, pursuant to Paragraph 27(i), (ii), or (iii), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by the Response Agencies subject only to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by the Response Agencies. In the event that a submission has a material defect and the Response Agencies modify the submission to cure the deficiencies pursuant to Paragraph 27(i), the

Response Agencies retain their right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

29. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 27(iv), Settling Defendants shall, within 20 days, correct the deficiencies and resubmit the plan, report, or other item for approval, except where the Response Agencies' notice specifies a longer period of time or a shorter period of time that is necessary to avoid serious disruption to the Phase 1 Work. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 20-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 30 and 31.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 27(iv), Settling Defendants shall proceed, at the direction of the Response Agencies, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

30. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by the Response Agencies, the Response Agencies may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. The Response Agencies also retain the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by the Response Agencies, subject only to their right to invoke the procedures set forth in Section XVII (Dispute Resolution).

31. If upon resubmission, a plan, report, or item is disapproved or modified by the Response Agencies due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) and the response Agencies' action is overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Phase 1 Work and accrual and payment of any stipulated penalties during dispute resolution. If the Response Agencies' disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

32. All plans, reports, and other items required to be submitted to the response Agencies under this Consent Decree shall, upon approval or modification by the Response Agencies, be enforceable under this Consent Decree. In the event the Response Agencies approve or modify a portion of a plan, report, or other item required to be submitted to the Response Agencies under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XI. PROJECT COORDINATORS

33. Settling Defendants' Project Coordinator. The Settling Defendants shall designate a Project Coordinator who shall be responsible for administration of all of Settling Defendants' response activities under this Consent Decree. The Settling Defendants' Project Coordinator shall be an employee of NCR Corporation or a consultant retained by NCR Corporation. The Settling Defendants have designated Roger McCready of NCR as their Project Coordinator. The Project Coordinator has been given the authority to make decisions on behalf

of Settling Defendants with respect to the Phase 1 Work under this Consent Decree, making decisions in a manner consistent with a separate written agreement between the two Settling Defendants. To the greatest extent possible, the Settling Defendants' Project Coordinator shall be readily available during the Phase 1 Work.

34. Response Agencies' Project Coordinators.

a. EPA and WDNR shall each designate a Project Coordinator who shall be responsible for overseeing the implementation of the Phase 1 Work. EPA has designated James Hahnenberg as the EPA Project Coordinator. WDNR has designated Gregory Hill as the WDNR Project Coordinator.

b. Plaintiffs may designate other representatives, including, but not limited to, EPA and WDNR employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the Response Agencies' Project Coordinators shall have authority, consistent with the National Contingency Plan, to halt any Phase 1 Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

35. Successor Project Coordinators. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by

the Response Agencies and shall have the technical expertise sufficient to adequately oversee all aspects of the Phase 1 Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter.

36. The Response Agencies' Project Coordinators and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XII. PERFORMANCE GUARANTEE

37. In order to ensure the full and final completion of the Phase 1 Work, Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $30 million (hereinafter the "Estimated Cost of the Phase 1 Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Phase 1 Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier that has the authority to issue insurance policies on an admitted or surplus lines basis;

e. A demonstration by one or more Settling Defendants that each Settling Defendant making that demonstration meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Phase 1 Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Phase 1 Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Phase 1 Work that it proposes to guarantee hereunder.

38. Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee a demonstration of satisfaction of financial test criteria pursuant to Paragraph 37.e with respect to Settling Defendant NCR Corporation.

39. If at any time during the effective period of this Consent Decree, the Settling Defendants provide a Performance Guarantee for completion of the Phase 1 Work by means of a demonstration or guarantee pursuant to Subparagraph 37.e or Subparagraph 37.f above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the

notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Phase 1 Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Phase 1 Work.

40. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Phase 1 Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Phase 1 Work or for any other reason, Settling Defendants, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 37.e of this Consent Decree that satisfies all requirements set forth in this Section XII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Subparagraph 42.b.(2) of this Consent Decree. Settling Defendants' inability to post a Performance Guarantee for completion of the Phase 1 Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of

Settling Defendants to complete the Phase 1 Work in strict accordance with the terms hereof.

41. The commencement of any Work Takeover pursuant to Paragraph 77 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Subparagraphs 37.a, 37.b, 37.c, 37.d, or 37.f, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Phase 1 Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Phase 1 Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Subparagraph 37.e, Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Phase 1 Work to be performed as of such date, as determined by EPA.

42. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 37 above, Settling Defendants may, on any anniversary of the Date of Entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Phase 1 Work to be performed. Settling Defendants shall submit a written proposal

for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Phase 1 Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Subparagraph 42.b.(2) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 40 or Subparagraph 42.b of this Consent Decree.

b. Change of Form of Performance Guarantee.

(1) If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Subparagraph 42.b.(2) of this Consent Decree. Any decision made by EPA on a petition submitted under this Subparagraph 42.b.(1) shall be made in EPA’s sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any

other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Phase 1 Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to EPA (with a copy to WDNR) in accordance with Section XXIV (Notices and Submissions). EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to EPA (with a copy to WDNR) within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXIV (Notices and Submissions).

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendant(s) shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIII. EMERGENCY RESPONSE

43. In the event of any action or occurrence during the performance of the Phase 1 Work which causes or threatens a release of Waste Material at or from the Phase 1 Project Area that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 44, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Response Agencies' Project Coordinators. If the EPA Project Coordinator is not available, the Settling Defendants shall notify the EPA Region 5 Emergency Response Unit. Settling Defendants shall take such actions in consultation with the EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Settling Defendants shall reimburse EPA and the State for all costs of the response action not inconsistent with the NCP pursuant to Paragraph 45 (Payment of

Specified Future Response Costs).

44. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State to: (i) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (ii) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material at or from the Site, subject to Section XIX (Covenants Not to Sue by Plaintiffs).

XIV. PAYMENTS FOR RESPONSE COSTS

45. Payment of Specified Future Response Costs.

a. Settling Defendants shall pay to EPA all Specified Future Response Costs incurred by the United States, to the extent such costs are not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Defendants a bill requiring payment that includes an EPA cost summary, showing direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary, showing costs incurred by DOJ and its contractors, if any. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. All payments and disbursements received by EPA under this Subparagraph 45.a shall be deposited in the Fox River Site Special Account within the EPA Hazardous Substance Superfund, and shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund. Settling Defendants shall make all payments required by this Paragraph in accordance with the payment instructions set forth in Subparagraph 46.a.

b. Settling Defendants shall pay to the State all Specified Future Response Costs incurred by the State, to the extent such costs are not inconsistent with the National Contingency Plan. On a periodic basis, the State will send Settling Defendants a bill requiring payment that includes a WDNR cost summary, showing direct and indirect costs incurred by WDNR and its contractors, and a WDOJ cost summary, showing costs incurred by WDOJ and its contractors, if any. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. Settling Defendants shall make all payments required by this Paragraph in accordance with the payment instructions set forth in Subparagraph 46.b.

c. In the event that the payments required by this Paragraph 45 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest shall begin to accrue on the date of the bill and shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 61. The Settling Defendants shall make all payments of Interest in the same manner as the principal amount.

d. The dispute resolution procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding reimbursement of the United States and the State for their Specified Future Response Costs.

46. Payment Instructions.

a. Payments to EPA. All payments to EPA under this Section shall: (i) be made by a wire transfer or certified or cashier's check or checks made payable to "EPA

Hazardous Substance Superfund, Fox River Site Special Account;" (ii) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/5; and (iii) indicate that the payment is for Specified Future Response Costs payable pursuant to this Consent Decree. All payments to EPA under Section XVIII (Stipulated Penalties) shall: (i) be made by a wire transfer or certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund;" (ii) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/5; and (iii) indicate that the payment is for stipulated penalties payable pursuant to this Consent Decree. All payments under this Subparagraph 46.a shall be made in accordance with wire transfer instructions provided by EPA or shall be sent to:

U.S. Environmental Protection Agency, Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

At the time of payment, Settling Defendants shall ensure that notice that payment has been made is sent to DOJ and EPA in accordance with Section XXIV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

b. Payments to the State. All payments to the State under this Section or under Section XVIII (Stipulated Penalties) shall: (i) be made by a certified or cashier's check or checks made payable to "Wisconsin Department of Natural Resources;" (ii) reference the Lower Fox River and Green Bay Site; (iii) indicate that the payment is being made pursuant to this Consent Decree with NCR Corporation and Sonoco-U.S. Mills, Inc.; and (iv) be sent to:

Wisconsin Department of Natural Resources
Attn: Gregory Hill
101 S. Webster St.
Madison, WI 53703

At the time of payment, Settling Defendants shall ensure that notice that payment has been made is sent to the State in accordance with Section XXIV (Notices and Submissions).

XV. INDEMNIFICATION AND INSURANCE

47. Settling Defendants' Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in

carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 47, and shall consult with Settling Defendants prior to settling such claim.

c. Nothing contained in this Consent Decree is intended to limit Settling Defendants' potential for insurance coverage.

48. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Phase 1 Work on or relating to the Phase 1 Project Area, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Phase 1 Work on or relating to the Phase 1 Project Area, including, but not limited to, claims on account of construction delays.

49. No later than 15 days before commencing any on-site Phase 1 Remedial Action work under this Consent Decree, Settling Defendants shall secure, and shall maintain until the first anniversary after completion of the Phase 1 Work, comprehensive general liability insurance with limits of at least 5 million dollars, combined single limit, and automobile liability insurance with limits of at least 2 million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree,

Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Phase 1 Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Phase 1 Work under this Consent Decree, Settling Defendants shall provide the Response Agencies certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Date of Entry. If Settling Defendants demonstrate by evidence satisfactory to the Response Agencies that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVI. FORCE MAJEURE EVENTS

50. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure Event, the Settling Defendants or their contractors shall orally notify the Response Agencies' Project Coordinators or, in the event the EPA Project Coordinator is unavailable, Superfund Division Director for EPA Region 5, within 7 working days of when Settling Defendants first knew that the event might cause a delay. Within 14 working days thereafter, Settling Defendants shall provide the Response Agencies a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing

such delay to a Force Majeure Event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure Event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of a Force Majeure Event for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

51. If EPA, after a reasonable opportunity for review and comment by WDNR, agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure Event will be extended by EPA, after a reasonable opportunity for review and comment by WDNR, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure Event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by WDNR, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure Event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by WDNR, agrees that the delay is attributable to a Force Majeure Event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure Event.

52. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure Event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraph 50, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XVII. DISPUTE RESOLUTION

53. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Settling Defendants and the Plaintiffs arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the Plaintiffs to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section. The dispute resolution procedures of this Section shall not apply to any disputes between Settling Defendants and the Plaintiffs not arising under or with respect to this Consent Decree.

54. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 10 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written

Notice of Dispute.

55. Formal Dispute Resolution.

a. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 54, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the Plaintiffs a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 56 or Paragraph 57.

b. Within 30 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 56 or 57. Within 10 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 56 or 57, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 56 and 57.

56. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (i) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by the Response Agencies under this Consent Decree; and (ii) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants under this Consent Decree regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Superfund Division Director for EPA Region 5 will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 56.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraphs 56.c and d.

c. Any administrative decision made by EPA pursuant to Subparagraph 56.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 20 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree.

The United States and the State may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director for EPA Region 5 is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Subparagraph 56.a.

57. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 55, and after service of EPA's Statement of Position and any Reply, the Superfund Division Director for EPA Region 5 will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 20 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

58. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this

Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 70. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

59. Disputes Regarding Specified Future Response Costs. Settling Defendants may contest payment of any Specified Future Response Costs under Paragraph 45 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Notice of any such objection shall be given in writing within 30 days of receipt of the bill. A copy of any notice of objection shall be sent to the United States (if the costs of the United States are being disputed) or to the State (if the costs of the State are being disputed) pursuant to Section XXIV (Notices and Submissions). Any such notice of objection shall specifically identify the contested Specified Future Response Costs and the basis for objection. In the event of an objection, all uncontested Specified Future Response Costs shall immediately be paid to the United States or the State in the manner described in Paragraph 45. Upon submitting a notice of objection, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If the United States or the State prevails in the dispute, within 10 days of the resolution of the dispute, all sums due (with accrued Interest) shall be paid to EPA (if the United States' cost are disputed) or to the State (if the State's costs are disputed) in the manner described in Paragraph 45. If the Settling Defendants prevail concerning any aspect of the

contested costs, the portion of the costs (plus associated accrued interest) for which they did not prevail shall be disbursed to EPA or the State, as appropriate, in the manner described in Paragraph 45; and the amount that was successfully contested need not be paid to EPA or to the State.

XVIII. STIPULATED PENALTIES

60. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVI (Force Majeure Events). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by the Plaintiffs pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

61. Stipulated Penalty Amounts - Failure to Make Payments. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth below for each day of violation for the Settling Defendants' failure to make payments as required under this Consent Decree:

VIOLATION	PENALTY PER DAY		
	UP TO 10 DAYS	11-30 DAYS	OVER 30 DAYS
Failure to make any payment of Specified Future Response Costs as required by Subparagraph 45:	$1,000	$2,500	$5,000

Any stipulated penalties for failure to make payment of Specified Future Response Costs shall be paid to the Party that rendered the bill involved.

62. Stipulated Penalty Amounts - Phase 1 Remedial Design Activities. Settling Defendant NCR Corporation shall be liable for stipulated penalties as follows for each day of violation for failure to any of the Phase 1 Remedial Design Activities as required under Paragraph 9 of this Consent Decree: $1,000 per day for the first seven (7) days and $2,500 per day for each day thereafter. Any stipulated penalties under this Paragraph shall be divided evenly between EPA and the State. If a stipulated penalty is assessed under this Paragraph, a stipulated penalty for the same noncompliance shall not be assessed under the Remedial Design Agreement.

63. Stipulated Penalty Amounts - Phase 1 Work. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth below for each day of violation for failure to perform the Phase 1 Work as required under this Consent Decree:

VIOLATION	PENALTY PER DAY		
	UP TO 10 DAYS	11-30 DAYS	OVER 30 DAYS
Failure to perform the Phase 1 Work in accordance with the schedule and requirements established by the SOW and the Phase 1 Work Plans, as mandated by Paragraph 11:	$2,000	$5,000	$10,000
Failure to undertake response action as required by Section XIII (Emergency Response):	$5,000	$10,000	$20,000

Any stipulated penalties under this Paragraph shall be divided evenly between EPA and the State.

64. Stipulated Penalty Amount - Phase 1 Work Takeover. In the event that the Response Agencies assume performance of a portion or all of the Phase 1 Work pursuant to Paragraph 77 of Section XIX (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of $250,000. Any stipulated penalties under this

Paragraph shall be divided evenly between EPA and the State.

65. Stipulated Penalty Amounts - Phase 1 Work Plans, Reports and Submissions. Settling Defendants shall be liable for stipulated penalties in the amounts set forth below for each day of violation for failure to comply with a requirement to submit any Phase 1 Work Plan, any report, or any other submission under this Consent Decree:

VIOLATION	PENALTY PER DAY		
	UP TO 10 DAYS	11-30 DAYS	OVER 30 DAYS
Failure to submit any Phase 1 Work Plan as required by Paragraph 11:	$2,000	$4,000	$5,000
Failure to submit any Monthly Progress Report as required by Paragraph 23:	$1,000	$2,000	$2,500
Failure to submit a Phase 1 Final Report as required by Paragraph 24:	$2,000	$4,000	$5,000
Failure to comply with the Release Reporting requirements under Paragraph 25:	$1,000	$2,000	$2,500

Any stipulated penalties under this Paragraph shall be divided evenly between EPA and the State.

66. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section X (Response Agencies' Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after the Response Agencies' receipt of such submission until the date that the Response Agencies notify Settling Defendants of any deficiency; (ii) with respect to a decision

by the Superfund Division Director for Region 5 under Subparagraph 56.b or 57.a of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' Reply to EPA's Statement of Position is received until the date that the Superfund Division Director issues a final decision regarding such dispute; or (iii) with respect to judicial review by this Court of any dispute under Section XVII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties and/or stipulated damages for separate violations of this Consent Decree.

67. Following the Plaintiffs' determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, the Plaintiffs may give Settling Defendants written notification of the same and describe the noncompliance. The Plaintiffs may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Plaintiffs have notified the Settling Defendants of a violation.

68. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of the Settling Defendants' receipt of a demand for payment by the Plaintiffs, unless Settling Defendants invoke the dispute resolution procedures under Section XVII (Dispute Resolution). All payments under this Section shall be paid by certified or cashier's check(s), shall indicate that the payment is for stipulated penalties, and shall be submitted to EPA and/or to the State, as appropriate, in the manner specified by Paragraph 46 (Payment Instructions).

69. The payment of penalties under this Section shall not alter in any way Settling

Defendants' obligation to make payments or complete the performance of the Phase 1 Remedial Design Activities or the Phase 1 Work required under this Consent Decree.

70. Penalties shall continue to accrue as provided in Paragraph 66 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by an administrative decision that is not appealed to this Court, accrued penalties determined to be owing shall be paid to within 15 days of the agreement or the receipt of the administrative decision;

b. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the Plaintiffs within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the Escrow Agent shall pay the balance of the account to the Plaintiffs or to Settling Defendants to the extent that they prevail.

71. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 68.

72. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in

any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA; provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

73. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties payable to the United States that have accrued pursuant to this Consent Decree. Similarly, notwithstanding any other provision of this Section, the State may, in its unreviewable discretion, waive any portion of stipulated penalties payable to the State that have accrued pursuant to this Consent Decree.

XIX. COVENANTS NOT TO SUE BY PLAINTIFFS

74. United States' Covenant Not To Sue. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 76 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Phase 1 Work and for recovery of Specified Future Response Costs. This covenant not to sue shall take effect upon the Date of Entry and is conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, payment of all Specified Future Response Costs pursuant to Section XIV. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

75. State's Covenant Not To Sue. In consideration of the actions that will be

performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 76 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA for performance of the Phase 1 Work and for recovery of Specified Future Response Costs. This covenant not to sue shall take effect upon the Date of Entry and is conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including, but not limited to, payment of all Specified Future Response Costs pursuant to Section XIV. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

76. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 74 and Paragraph 75. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. liability for costs not included within the definition of Specified Future Response Costs;

c. liability for performance of response action other than the Phase 1 Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat

of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

77. Work Takeover.

a. In the event EPA, after consultation with WDNR, determines that Settling Defendants have (i) ceased implementation of any portion of the Phase 1 Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Phase 1 Work, or (iii) are implementing the Phase 1 Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Subparagraph 77.a, Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Phase 1 Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Subparagraph 77.b.

c. Settling Defendants may invoke the procedures set forth in Section XVII (Dispute Resolution), Paragraph 56, to dispute EPA's implementation of a Work Takeover under Subparagraph 77.b. However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole

discretion commence and continue a Work Takeover under Subparagraph 77.b until the earlier of (i) the date that Settling Defendants remedy, to EPA' s satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution), Paragraph 56, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any Performance Guarantee(s) provided pursuant to Section XII of this Consent Decree, in accordance with the provisions of Paragraph 41 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 41, any unreimbursed costs incurred by EPA in performing Phase 1 Work under the Work Takeover shall be considered Specified Future Response Costs that Settling Defendants shall pay pursuant to Section XIV (Payments for Response Costs).

78. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XX. COVENANTS BY SETTLING DEFENDANTS

79. Covenant Not to Sue. Subject to the reservations in Paragraph 80, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Phase 1 Work and Specified Future Response Costs or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous

Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States (including any department, agency or instrumentality of the United States) or the State (including any department or agency of the State) under CERCLA Sections 107 or 113 related to the Phase 1 Work or Specified Future Response Costs; or

c. any claims against the United States (including any department, agency or instrumentality of the United States) or the State (including any department or agency of the State) under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law, related to the Phase 1 Work or Specified Future Response Costs.

80. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of

sovereign immunity is found in a statute other than CERCLA.

81. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

82. Waiver of Claims Against De Micromis Parties.

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site contained less than 2.0 kilograms of polychlorinated biphenyls (which amounts to 0.002% of the total mass of polychlorinated biphenyls remaining at the Site, as estimated by the December 2002 Remedial Investigation Report).

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXI. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION

83. Except as provided in Paragraph 82 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any

cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 82 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

84. Statutory Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Date of Entry, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For the purpose of this Paragraph 84, the "matters addressed" by this Consent Decree are the Phase 1 Work and Specified Future Response Costs. Notwithstanding the foregoing, the Parties specifically recognize that the Settling Defendants are performing the Phase 1 Work and paying the Specified Future Response Costs pursuant to an interim allocation of funding between them, and nothing in this Consent Decree shall prohibit either Settling Defendant from seeking to re-allocate the cost of the Phase 1 Work or the Specified Future Response Costs between them by means of any claim allowed under federal or state law, including but not limited to CERCLA Section 113, 42 U.S.C. § 9613.

85. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States and the State in writing at the same time it files or asserts the claim in litigation.

86. Each Settling Defendant also agrees that, with respect to any suit or claim for

contribution brought against it for matters related to this Consent Decree, it will notify in writing the United States and the State within 10 days of service of the complaint upon it. In addition, each Settling Defendant shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

87. Waiver of Claim Splitting Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by Plaintiffs).

XXII. ACCESS TO INFORMATION

88. Settling Defendants shall provide to the Response Agencies, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Phase 1 Work. Settling Defendants shall also make available to the Response Agencies, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the

Phase 1 Work.

89. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information: and (vi) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

90. No claim of confidentiality or privilege shall be made with respect to any data generated pursuant to the requirements of this Consent Decree, including, but not limited to, all

sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXIII. RETENTION OF RECORDS

91. Until 10 years after the Settling Defendants' completion of the Phase 1 Work, each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Phase 1 Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the completion of the Phase 1 Work, Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Phase 1 Work. At any time more than 5 years after completion of the Phase 1 Work, the Settling Defendants may request Plaintiffs' assent to terminate the document retention period earlier for specified categories of records and documents. If Plaintiffs assent to any such request, the Plaintiffs assent shall be given in writing.

92. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or WDNR. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and

title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

93. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXIV. NOTICES AND SUBMISSIONS

94. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the State, and the Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-1045/5)

U.S. Mail:	Overnight Delivery Service:
P.O. Box 7611	601 D Street, N.W. – Room 2121
Washington, D.C. 20044-7611	Washington, DC 20004

As to EPA:

Director, Superfund Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

As to the State:

As to WDOJ:

Wisconsin Department of Justice
Division of Legal Services
Environmental Protection Unit

U.S. Mail:	Overnight Delivery Service:
P.O. Box 7857	17 West Main Street
Madison, WI 53707-7857	Madison, WI 53702

As to WDNR:

Gregory Hill
State Project Coordinator
Wisconsin Department of Natural Resources

U.S. Mail:	Overnight Delivery Service:
P.O. Box 7921	101 S. Webster St.
Madison, WI 53707-7921	Madison, WI 53703

As to the Settling Defendants:

As to NCR Corporation

General Counsel
NCR Corporation
Law Department
1700 South Patterson Blvd.
Dayton, OH 45479

with a copy to:

J. Andrew Schlickman
Sidley Austin LLP
1 South Dearborn Street
Chicago, IL 60603

As to Sonoco-U.S. Mills, Inc.

Thomas R. Gottshall
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201-3226

with a copy to:

John M. Van Lieshout
Reinhart Boerner Van Deuren S.C.
1000 North Water Street, P.O. Box 2965
Milwaukee, WI 53201-2965

XXV. EFFECTIVE DATE

95. The effective date of this Consent Decree shall be the Date of Entry; provided, however, that the Settling Defendants hereby agree that they shall be bound upon the Date of Lodging to comply with obligations of the Settling Defendants specified in this Consent Decree as accruing upon the Date of Lodging. In the event the Plaintiffs withdraw or withhold consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to comply with requirements of this Consent Decree upon the Date of Lodging shall terminate.

XXVI. RETENTION OF JURISDICTION

96. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution) hereof.

XXVII. APPENDICES

97. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the SOW.

"Appendix B" is the Remedial Design Agreement.

XXVIII. COMMUNITY RELATIONS

98. Settling Defendants shall propose to the Response Agencies the Settling Defendants' participation in the Community Relations Plan to be developed by the Response Agencies. The Response Agencies will determine the appropriate role for the Settling Defendants under the plan. Settling Defendants shall also cooperate with the Response Agencies in providing information regarding the Phase 1 Work to the public. As requested by the Response Agencies, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by the Response Agencies to explain activities relating to the Phase 1 Work.

XXIX. MODIFICATION

99. There shall be no material modifications to the terms of this Consent Decree without written agreement of the Parties and approval of the Court. Non-material modifications of the Consent Decree may be made by written agreement of the Parties, without approval of the Court, but shall be filed in this action. Schedules specified in this Consent Decree for completion of the Phase 1 Work may be modified by a written agreement between the Response Agencies and the Settling Defendants, without Court approval, so long as the schedule changes constitute a non-material modification of the Consent Decree.

100. Except as provided in Paragraph 12 ("Modification of the SOW or the Phase 1 Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the State, Settling Defendants, and the Court. Modifications to the SOW that do not materially alter that document may be made by written agreement between the Response Agencies and the Settling Defendants.

101. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

102. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

103. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXI. SIGNATORIES/SERVICE

104. The undersigned representatives of each Settling Defendant, the undersigned representatives of the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

105. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

106. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXII. FINAL JUDGMENT

126. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement

embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

127. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED.

THE COURT'S APPROVAL AND ENTRY OF THIS CONSENT DECREE SHALL BE SIGNIFIED BY ENTRY OF A SEPARATE ORDER IN ACCORDANCE WITH THE COURT'S ELECTRONIC CASE FILING POLICIES AND PROCEDURES MANUAL

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this "Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site."

FOR THE UNITED STATES OF AMERICA

3/27/2006
Date

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

3/27/2006
Date

RANDALL M. STONE, Senior Lawyer
JEFFREY A. SPECTOR, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

STEVEN M. BISKUPIC
United States Attorney

MATTHEW V. RICHMOND
Assistant United States Attorney
Eastern District of Wisconsin
U.S. Courthouse and Federal Building
Room 530
517 E. Wisconsin Avenue
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this "Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site."

4/3/06
Date

BHARAT MATHUR
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

March 23, 2006
Date

BERTRAM C. FREY
Acting Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

3-20-06
Date

RICHARD MURAWSKI
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this "Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site."

FOR THE STATE OF WISCONSIN

3/13/06
Date

P. SCOTT HASSETT
Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Date

Wisconsin Department of Justice
17 West Main Street
Madison, WI 53702

For the State of Wisconsin

JERRY L. HANCOCK
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53702
(608) 266-1221

THE UNDERSIGNED PARTY enters into this "Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site."

FOR NCR CORPORATION

March 8, 2006
Date

Signature:
Name (print): Jon S. Hoak
Title: SVP, General Counsel & Secretary
Address: 1700 S. Patterson Blvd.
Dayton, OH 45479
937-445-2900

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Jon S. Hoak
Title: SVP, General Counsel & Secretary
Address: 1700 S. Patterson Blvd.
Dayton, OH 45479

Ph. Number: 937-445-2900

THE UNDERSIGNED PARTY enters into this "Consent Decree for Performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site."

FOR SONOCO-U.S. MILLS, INC.

March 9, 2006
Date

Signature: _____
Name (print): TIM DAVIS
Title: PRESIDENT
Address: 824 FORT HOWARD AVE.
DE PERE, WI 54115

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Thomas R. Gottshall, Esq.
Title: c/o Haynsworth Sinkler Boyd PA
Address: P.O. Box 11889
1201 Main Street Suite 2200
Columbia, S.C. 29211-1889
Ph. Number: 803-779-3080

APPENDIX A

STATEMENT OF WORK
For Phase 1 of the Remedial Action at Operable Units 2-5 of the Lower Fox River and Green Bay Site

I. INTRODUCTION

A. Purpose

The purpose of this Statement of Work ("SOW") is to set forth the requirements for performance of Phase 1 of the Remedial Action in Operable Units 2-5 of the Lower Fox River and Green Bay Site (the "Site"). The Phase 1 Remedial Action will address contaminated sediment in a portion of Operable Unit 4 of the Site depicted on Figure 1 attached hereto (the "Phase 1 Project Area"). This area is located along the west bank of the Lower Fox River, just downstream from the De Pere Dam, in De Pere, Wisconsin. The work will be conducted under the accompanying Consent Decree for Performance of Phase 1 of the Remedial Action at Operable Units 2-5 of the Lower Fox River and Green Bay Site (the "Consent Decree").

B. Description of the Phase 1 Remedial Action

1. The Settling Defendants will remove PCB-contaminated sediment from the Phase 1 Project Area, as depicted on Figure 1 attached to this SOW. The project will result in the removal of an estimated total of 118,900 cubic yards of in-place, contaminated sediments inside the Phase 1 Project Area. The targeted volume will be refined and may increase or decrease during the Phase 1 Remedial Design process described in Section II.A below. The Cleanup Objectives for the project are outlined below in Section I.C.

2. The Settling Defendants will dewater removed sediments (as needed), treat the associated wastewater, and dispose of the dewatered sediments in upland landfills. Sediments classified as Toxic Substances Control Act ("TSCA") wastes shall be disposed of in accordance with TSCA disposal requirements, and non-TSCA wastes shall be disposed of in accordance with State solid waste disposal requirements.

3. The Settling Defendants will construct access roads, staging areas, work pads, and other infrastructure as necessary to accomplish the required sediment removal and to dewater and stabilize sediments as necessary to meet disposal requirements.

4. The Settling Defendants will provide or obtain the necessary utilities, site security, and support services to complete the project.

5. At the completion of the response activities, the Settling Defendants will restore the onshore area used for the response action in a manner approved by the Response Agencies. However, if the property owner agrees and the Response Agencies approve, the

Settling Defendants will be allowed to keep in place any infrastructure or improvements that might be useful for further phases of the Remedial Action.

C. Cleanup Objectives

As specified by a duly-approved Phase 1 Remedial Action Plan required by Section II.B.1 of this SOW, sediments within the horizontal limits of the Phase 1 Project Area, as set forth in Figure 1, will be removed by either dredging or excavation to target elevations (i.e., vertical limits), as set forth in Figure 1, that were developed to target all PCB contaminated sediments with concentrations greater than 1 ppm. The areal extent of the Phase 1 Project Area encompasses all portions of the general area which have been identified through pre-design sampling and associated Thiessen polygon analysis to have sediment PCB concentrations exceeding 50 ppm. As provided by Sections II.A.1 and II.B.1 of this SOW and Subparagraph 12.b of the Consent Decree, the parties may agree to adjust the horizontal and/or vertical limits of the Phase 1 Project Area based on further analysis of recent sampling data. Removal of the contaminated sediments within the Phase 1 Project Area will proceed until the following objectives are met:

1. The final post-removal confirmatory sampling within the Phase 1 Project Area pursuant to Section II.C.3 of this SOW must indicate that all sediments containing PCBs at a concentration of 50 ppm PCBs or greater have been dredged or excavated.

2. The final post-removal confirmatory survey of the Phase 1 Project Area pursuant to Section II.C.3 of this SOW must indicate that sediment removal to the 1 ppm target elevation has been achieved over at least 95 percent of the Phase 1 Project Area.

3. If final post-removal confirmatory sampling reveals sediment with PCB concentrations exceeding 1 ppm remains within the Phase 1 Project Area, the Settling Defendants must place a minimum of six inches of clean sand over that area, consistent with the ROD. Any such clean sand shall be taken from an off-site source.

4. The Settling Defendants must establish side slopes adjacent to the Phase 1 Project Area that are sufficient to ensure the stability of remaining sediments. All side slopes with surface PCB concentrations exceeding 1 ppm must be covered with a minimum of six inches of clean sand, consistent with the ROD.

D. Applicable or Relevant and Appropriate Requirements to be Considered

Permits are not required for this project pursuant to CERCLA Section 121(e)(1). The following substantive requirements will be met to the extent that they are applicable, or to the extent that they are relevant and appropriate and do not interfere with expeditious completion of the project:

The substantive requirements that, if a permit were required, would be set forth in a WDNR dredging permit (as appropriate).

The substantive water discharge limitation requirements that, if a permit were required, would be set forth in a WPDES Permit. These limitations will be described in the Phase 1 Remedial Action Plan, and the limitations set forth in the approved Phase 1 Remedial Action Plan will be met.

Sediments classified as TSCA wastes shall be disposed in accordance with TSCA disposal requirements, and non-TSCA wastes shall be disposed in accordance with State Solid Waste disposal requirements.

E. Phase 1 Remedial Action Implementation

The Phase 1 Remedial Action will consist of the following elements:

- Removal and Processing of PCB-contaminated sediment;
- TSCA and Non-TSCA Disposal; and
- Post-Removal Confirmatory Sampling and Surveys (including covering of residuals or exposed areas with sand, if necessary)

These steps are described below and shall be completed in accordance with the schedule provided below.

II. WORK TO BE PERFORMED

A. Phase 1 Remedial Design Activities

The remedial design for Operable Units 2-5 at the Site is being prepared under an administrative settlement agreement between the Response Agencies and NCR Corporation and Fort James Operating Company, captioned In re Lower Fox River and Green Bay Site, U.S. EPA Region 5 CERCLA Docket No. V-W-'04-C-781 (the "Remedial Design Agreement"). A copy of the Remedial Design Agreement is attached as Appendix B to the Consent Decree. As provided by Consent Decree Paragraph 9, the Remedial Design Agreement is incorporated into the Consent Decree by reference, and all requirements under the Remedial Design Agreement are thereby made enforceable requirements of this Consent Decree, but only as to Settling Defendant NCR Corporation.

Settling Defendant NCR Corporation shall perform the Phase 1 Remedial Design (including pre-design activities) in accordance with the Remedial Design Agreement. Settling Defendant NCR Corporation shall submit the plans and reports described in this Section II.A to the Response Agencies pursuant to the Remedial Design Agreement and Consent Decree Paragraph 9. The design phase will consist of the activities described below.

1. Pre-Design Plan

A technical memorandum will be submitted that presents a preliminary construction plan that generally describes equipment, upland site preparation, removal and processing of PCB-contaminated sediment, TSCA and non-TSCA disposal, and post-construction sampling and surveys. This memorandum will also describe any planned supplemental evaluations, sampling and/or bench-scale treatability testing. As noted in Section I.C, the memorandum may propose revisions to Figure 1 attached to this SOW in order to adjust the horizontal and/or vertical limits of the Phase 1 Project Area, but any proposed revision and adjustment shall be subject to review and approval by the Response Agencies. The Pre-Design Plan shall be consistent with the ROD and with achieving the Cleanup Objectives described in Section I.C, above.

2. Quality Assurance Project Plan

A Quality Assurance Project Plan will be submitted consistent with Section IV below. All sampling and analysis will be done in accordance with the approved Quality Assurance Project Plan.

3. Sampling and Analysis Plan

A Sampling and Analysis Plan will be submitted that will describe the procedures and analytical techniques to be used for the following required sampling and monitoring:

Turbidity and Water Column PCB Monitoring – The Sampling and Analysis Plan shall propose a real-time turbidity monitoring system for monitoring the impacts of the dredging operations for approval by the Response Agencies. In-stream water column samples will be collected and analyzed for PCBs when turbidity measured by a downstream station is significantly higher than the turbidity measured by the upstream station, unless the Settling Defendants can demonstrate that the increased turbidity is not due to the dredging. More specific requirements with regard to turbidity will be established in the Sampling and Analysis Plan, and the requirements established in the approved Sampling and Analysis Plan will be met.

Dewatered Sediment Sampling – Dewatered sediment will be sampled as required by laws and regulations applicable to the facility receiving such sediment.

Post-Removal Confirmatory Sampling – Surficial sediments will be analyzed for PCBs as provided in Section II.C.3 of this SOW.

Effluent Sampling – Samples of treated effluent from the project will be obtained and analyzed in accordance with the substantive requirements specified in lieu of a WPDES permit.

Post-Dredging Bathymetric Survey – If the sediments are removed by dredging (rather than by dry excavation), a post-dredging bathymetric survey of the Phase 1 Project Area (and adjacent side slopes) will be conducted.

Post-Excavation Survey – If the sediments are excavated rather than being dredged, a survey will be conducted to confirm the final elevations in the Phase 1 Project Area (and adjacent side slopes).

4. Supplemental Geotechnical Borings

Additional geotechnical borings may be taken, if necessary, to further define the grain size, degree of consolidation, and possibly other geotechnical characteristics of the sediments in the Phase 1 Project Area and adjacent areas where stable side slopes will be established.

B. Phase 1 Remedial Action Pre-Implementation Activities

1. Phase 1 Remedial Action Plan

The Settling Defendants will submit a Phase 1 Remedial Action Plan, which will be a memorandum summarizing all relevant information collected during the design phase and describing the proposed remedial action plan and schedule to meet the Cleanup Objectives. The Phase 1 Remedial Action Plan will specify removal elevations and removal methods, dewatering and/or amendment processes, water treatment processes, disposal facilities and handling methods for both TSCA and non-TSCA, specific confirmatory sampling and surveying techniques, and sand cover placement methods. As noted in Section I.C, the Phase 1 Remedial Action Plan may propose revisions to Figure 1 attached to this SOW in order to adjust the horizontal and/or vertical limits of the Phase 1 Project Area, but any proposed revision and adjustment shall be subject to review and approval by the Response Agencies. The Phase 1 Remedial Action Plan shall be consistent with the ROD and with achieving the Cleanup Objectives described in Section I.C, above.

2. Pre-Removal Bathymetry

In order to project depth and quantities accurately, a new pre-removal survey will be conducted.

C. Phase 1 Remedial Action Implementation Activities

1. Removal and Processing

The Settling Defendants will remove sediments from the Phase 1 Project Area and adjacent areas, pursuant to the approved Phase 1 Remedial Action Plan, until the Cleanup Objectives and stable side slopes are achieved.

If sediments are dredged rather than being removed by dry excavation, the dredged sediments will be dewatered to a state acceptable for disposal.

2. TSCA and Non-TSCA Disposal

Sediments classified as TSCA wastes shall be disposed of in accordance with TSCA disposal requirements, and non-TSCA wastes shall be disposed of in accordance with State Solid Waste disposal requirements.

3. Post-Removal Confirmatory Sampling and Surveys

After removal of sediments by dredging or excavation, the Settling Defendants shall conduct Confirmatory Sampling and Surveys under this section to confirm that the Cleanup Objectives have been met. The Confirmatory Sampling shall be conducted consistent with the Sampling and Analysis Plan discussed in Section II.A.3, above. After the target elevation within a particular area has been reached, the Settling Defendants will collect and analyze surficial sediment samples for PCBs to verify that the Cleanup Objectives described in Section I.C have been met. If sediments are removed by dredging (rather than by dry excavation), the Settling Defendants also will conduct a post–dredging bathymetric survey of the area, and prepare a final comprehensive bathymetric survey report upon project completion. If the sediments are excavated (rather than being dredged), the Settling Defendants will conduct a post–excavation survey, and prepare a final comprehensive post-excavation survey report upon project completion.

III. ADDITIONAL ACTIVITIES

The following additional activities shall also be conducted as part of the Phase 1 Remedial Action.

A. Health and Safety Plan

The Settling Defendants shall prepare and implement a Health and Safety Plan.

B. Monthly Progress Reports

During performance of the Phase 1 Remedial Action, the Settling Defendants shall submit monthly progress reports as required by Consent Decree Paragraph 23.

IV. PROJECT SCHEDULE

The following major milestones are established for the project:

Pre-Design Plan – due to be submitted to the Response Agencies within 45 days after the Date of Lodging of the Consent Decree.

Quality Assurance Project Plan – due to be submitted to the Response Agencies within 45 days after the Date of Lodging of the Consent Decree.

Sampling and Analysis Plan – due to be submitted to the Response Agencies within 60 days after the Date of Lodging of the Consent Decree.

Selection of Contractor – notice of selection due to be submitted to the Response Agencies within 60 days after the Date of Lodging of the Consent Decree.

Phase 1 Remedial Action Plan – August 1, 2006 target date for submission, but due to be submitted to the Response Agencies no later than within 30 days after the Response Agencies' approval of the last of the preceding three design phase documents (i.e., the Pre-Design Plan, the Quality Assurance Project Plan, and the Sampling and Analysis Plan).

Health and Safety Plan – due to be submitted to the Response Agencies within 180 days after the Date of Lodging of the Consent Decree.

Begin Contractor Mobilization to the Dewatering/Treatment Area of the Site – due to begin within 60 days after the Response Agencies' written approval of the Phase 1 Remedial Action Plan, or at such other time specified in the approved Phase 1 Remedial Action Plan.

Start of Sediment Removal – due to begin within 60 days after the Response Agencies' written approval of the Phase 1 Remedial Action Plan, or at such other time specified in the approved Phase 1 Remedial Action Plan, but no later than May 1, 2007.

Appendix A - Figure 1

#	Northing	Easting
1	2208902.39	1458047.55
2	2209051.38	1457947.31
3	2208825.85	1457616.09
4	2209487.12	1457165.83
5	2209280.79	1456862.81
6	2209401.47	1456780.64
7	2209288.11	1456614.16
8	2209164.65	1456695.81
9	2208929.3	1456351.93
10	2209082.95	1456246.1
11	2208998.4	1456121.94
12	2208611.29	1456486.01
13	2208731.68	1456661.11
14	2208466.7	1456842.75
15	2208710.31	1457293.27
16	2208575.98	1457395.73

LEGEND

- Toe of Dredge Cut
- 573 — Required Dredge Elevation
- Limits of Phase 1 Project Area
- 1 — Corner Point Location

NOTES

1. Bathymetry based on survey work provided by Retec to WDNR and dated October, 2004.
2. Vertical Datum: IGLD85, U.S. Survey Feet
3. Horizontal Datum: Wisconsin Transverse Mercator (WTM) NAD 83/97, converted to U.S. Survey Feet

0 150 300
SCALE IN FEET

ANCHOR ENVIRONMENTAL, L.L.C.

Shaw Shaw Environmental, Inc.

REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: JPL
DRAWN BY: RED
CHECKED BY: TSW
APPROVED BY:
SCALE: AS SHOWN
DATE: 02-13-06

LOWER FOX RIVER
PHASE 1 PROJECT AREA

SHEET NO. 1 OF 1

APPENDIX B: REMEDIAL DESIGN AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF: Lower Fox River and Green Bay Site Respondents: Fort James Operating Company, Inc. and NCR Corporation.	ADMINISTRATIVE ORDER ON CONSENT U.S. EPA Region 5 CERCLA Docket No. Proceedings Under Sections 104, 106, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended, 42 U.S.C. §§ 9604, 9606, 9622(a), and 9622(d)(3).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the State of Wisconsin ("State") through the Wisconsin Department of Natural Resources ("WDNR"), and Fort James Operating Company, Inc., a wholly owned subsidiary of Fort James Corporation, and NCR Corporation ("Respondents"). The mutual objectives of EPA, WDNR, and Respondents in entering into this Consent Order are: (i) to have Respondents perform certain design planning for Operable Units 2, 3, 4 and 5 ("OUs 2, 3, 4, and 5") of the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site) ("Site"), located in the State of Wisconsin, as set forth herein; (ii) to have Respondents perform certain pre-design sampling activities for OUs 2-5, as set forth herein; and (iii) to have the Respondents perform certain other remedial design activities needed for implementation of the Response Agencies' (EPA and WDNR) December 2002 selected remedy (and/or contingent remedy, as appropriate) for OU 2 at the Site and the June 2003 selected remedy (and/or contingent remedy, as appropriate) for OUs 3, 4 and 5 at the Site, including any modification to such remedies approved by EPA and WDNR.

2. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9622(a), and 9622(d)(3), as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to EPA Regional Administrators as of January 16, 2002, by EPA Delegation Nos. 14-1 and 14-2, and to the Director, Superfund Division, EPA Region 5, by Regional Delegation Nos. 14-1 and 14-2.

3. The activities conducted pursuant to this Consent Order are subject to approval by EPA and WDNR, as provided herein, and shall be consistent with CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, and all other applicable laws.

4. EPA, WDNR, and Respondents recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this

Consent Order do not constitute an admission of any liability. Nothing in this Consent Order is intended by the Parties to be, nor shall it be construed as, an admission of fact or law, an estoppel, or a waiver of defenses or claims by Respondents for any purpose. The Parties agree that the provisions of this Consent Order are not based on any views or assumptions regarding Respondents' appropriate share of liability or costs relating to the Site. Participation in this Consent Order by Respondents is not intended by the Parties to be, and shall not be, an admission of any fact or opinion developed by EPA, the State, or any other person or entity.

5. Respondents agree to comply with and be bound by the terms of this Consent Order. Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 5 and the Secretary of the Wisconsin Department of Natural Resources or their delegatees to issue or enforce this Consent Order, and also agree not to contest the basis or validity of this Consent Order or its terms in any action to enforce its provisions. The Respondents do not, by signing this Consent Order, waive any rights they may have to assert claims under CERCLA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), except as precluded by Section XXI (Other Claims).

II. PARTIES BOUND

6. This Consent Order applies to and is binding upon and inures to the benefit of EPA, WDNR, Respondents, and their successors and assigns. Respondents agree to instruct their officers, directors, employees and agents involved in the performance of the Work required by this Consent Order to take all necessary steps to accomplish the performance of said Work in accordance with this Consent Order. Any change in ownership or corporate status of a Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter that Respondent's responsibilities under this Consent Order. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. The signatories to this Consent Order certify that they are authorized to execute and legally bind the Parties they represent to this Consent Order.

7. Respondents shall provide a copy of this Consent Order to all contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order within fourteen (14) days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their respective subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

III. DEFINITIONS

8. Unless otherwise specified, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Order or in the attachments hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Consent Order" shall mean this Administrative Order on Consent and all attachments hereto. In the event of conflict between this Consent Order and any attachment, this Consent Order shall control.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the effective date of this Consent Order as provided by Section XXVI of this Consent Order (Effective Date).

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "EPA Past Cost Payment" shall mean the payment to be made to the Fox River Site Special Account within the EPA Hazardous Substance Superfund under Paragraph 53 (Initial Payment to the United States) of this Consent Order to reimburse EPA for a portion of its past response costs related to the Site.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur after the Effective Date in reviewing or developing plans, reports and other items pursuant to this Consent Order, in verifying the Work, or in otherwise implementing, overseeing, or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the access-related costs incurred pursuant to Section XII (including, but not limited to, the cost of attorney time and any monies paid to secure access including, but not limited to, the amount of just compensation) and any costs incurred pursuant to Paragraph 72 (Work Takeover).

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

j. "Operable Unit 2" or "OU2" shall mean the second reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in December 2002. More specifically, OU2 is the portion of the Lower Fox River (and the underlying River sediment) starting at the Upper Appleton Dam downstream to the Little Rapids Dam. As so defined, OU2 is depicted in Figure 7-21 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-1.

k. "Operable Unit 3" or "OU3" shall mean the third reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU3 is the portion of the Lower Fox River (and the underlying River sediment) starting at the Little Rapids Dam downstream to the De Pere Dam. As so defined, OU3 is depicted in Figure 7-26 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-2.

l. "Operable Unit 4" or "OU4" shall mean the fourth reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU4 is the portion of the Lower Fox River (and the underlying River sediment) starting at the De Pere Dam and ending at Green Bay. As so defined, OU4 is depicted in Figure 7-36 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-3.

m. "Operable Unit 5" or "OU5" shall mean the bay of Green Bay, as delineated by the Record of Decision signed by WDNR and EPA in June 2003. More specifically, OU5 includes all of Green Bay from the city of Green Bay to the point where Green Bay enters Lake Michigan. As so defined, OU5 is depicted in Figure 7-49 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B-4.

n. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

o. "Parties" shall mean all signatories to this Consent Order.

p. "Performance Standards" shall mean the selected remedy requirements, contingent remedy requirements, and cleanup standards for measuring the achievement of the goals of the Remedial Action, as set forth in Sections 13.1, 13.3.1, and 13.4 through 13.6 of the ROD and Section II of the SOW for Remedial Design.

q. "Record of Decision for OU 1-2 " or "OU 1-2 ROD" for purposes of this Consent Order shall mean the WDNR/EPA Record of Decision relating to the Remedial Action planned for Operable Units 1 and 2 of the Site, signed on December 18, 2002, by the WDNR and on December 20, 2002 by the Superfund Division Director, EPA Region 5, and all attachments.

r. "Record of Decision for OU 3-5" or "OU 3-5 ROD" for purposes of this Consent Order shall mean the WDNR/EPA Record of Decision relating to the Remedial Action planned for Operable Units 3, 4 and 5 of the Site, signed on June 30, 2003, by the WDNR and the Superfund Division Director, EPA Region 5, and all attachments.

s. "Remedial Design" or "RD" shall mean design planning, pre-design sampling, investigations, and analyses, preparation of the basis for design report, preliminary and final plans and specifications, and bid documents for the Remedial Action for Operable Units 2, 3, 4, and 5 pursuant to the Record of Decision for OU 1-2, the Record of Decision for OU 3-5, the Statement of Work, the RD Work Plan, and the Pre-Design Sampling Plan (the documents submitted by Respondents pursuant to Section IX of this Consent Order (Work to be Performed)).

t. "Respondents" shall mean Fort James Operating Company, Inc. and NCR Corporation.

u. "Response Agencies" shall mean the United States Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR).

v. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

w. "Site" shall mean the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site), or any relevant portion thereof.

x. "State" shall mean the State of Wisconsin, including its departments, agencies, and instrumentalities.

y. "Statement of Work" or "SOW" shall mean the statement of work for implementation of Remedial Design as set forth in Attachment A to this Consent Order and any modifications made in accordance with this Consent Order.

z. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

aa. "WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

bb. "Work" shall mean all activities Respondents are required to perform under this Consent Order, except those required by Section XXIV (Record Preservation).

IV. STATEMENT OF PURPOSE

9. The mutual objective of EPA, WDNR and Respondents in entering into this Consent Order is to protect human health, welfare and the environment at Operable Units 2, 3, 4, and 5 by producing a Remedial Design for remedial action in accordance with this Consent Order.

10. The activities conducted pursuant to this Consent Order are subject to approval by the Response Agencies. Respondents shall employ sound scientific, engineering, and construction practices and all activities undertaken shall be consistent with CERCLA, the NCP, and other applicable laws. The obligations of the Respondents to finance and perform the Work and to pay amounts owed to EPA and WDNR under this Consent Order are joint and several. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Consent Order, the remaining Respondents shall complete all such requirements.

V. FINDINGS OF FACT

11. Based on available information, including the Administrative Record in this matter, EPA and WDNR hereby find that:

a. At certain times in the past, primarily in the 1950's and 1960's, certain paper companies located along the Fox River engaged in the manufacture or recycling of carbonless copy paper. Polychlorinated biphenyls (PCBs), which are hazardous substances, were used in the production of carbonless copy paper and were contained in wastepaper that entered the paper recycling operations.

b. As a result of the paper mills' production or recycling of carbonless copy paper an estimated 690,000 pounds of PCBs were likely released to the Fox River. An estimated 66,000 pounds of these PCBs remain in the lower 39 miles of the Fox River.

c. As a result of this contamination, fish consumption advisories have been in effect on the Fox River and Green Bay since 1976.

d. A Remedial Investigation and Feasibility Study (RI/FS) under the technical lead of WDNR, and a proposed remedial action plan, was issued for public comment on October 5, 2001.

e. On January 7, 2003, the Response Agencies made public a Record of Decision for Operable Units 1 and 2 of the Site.

f. On June 30, 2003, the Response Agencies made public a Record of Decision for Operable Units 3, 4 and 5 of the Site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above and the Administrative Record, EPA and WDNR have determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as: (i) the past or present "owner" or "operator" of a facility from which there was a release of a hazardous substance to the Lower Fox River; and/or (ii) as a person who arranged for disposal or transport for disposal of a hazardous substance at a facility from which there was a release of a hazardous substance.

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

f. The conditions present at the Site may present a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Contingency Plan, as amended, 40 C.F.R. § 300.415(b)(2).

g. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The response actions required by this Consent Order are necessary to protect the public health, welfare, or the environment and if carried out in compliance with the terms of this Consent Order, shall be deemed consistent with the NCP.

VII. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Consent Order. Respondents shall

promptly and properly take appropriate response action at Operable Units 2, 3, 4, and 5 of the Site by conducting the Remedial Design.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

14. Selection of Contractors, Personnel. All Work performed by Respondents pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Within forty-five (45) days of the Effective Date of this Consent Order, and before the Work outlined below begins, Respondents shall notify the Response Agencies in writing of the names, titles, and qualifications of the key personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The qualifications of the key personnel undertaking the work for Respondents shall be subject to the Response Agencies' review, for verification that such persons meet minimum technical background and experience requirements.

15. If EPA or WDNR disapproves in writing of any contractor proposed by Respondents (such writing to contain the basis for such disapproval), Respondents shall notify the Response Agencies of the identity and qualifications of the replacement within thirty (30) days of the written notice. If EPA or WDNR subsequently disapproves of the replacement, EPA reserves the right to terminate this Consent Order and to conduct a complete Remedial Design, and to seek reimbursement for costs and penalties from Respondents. During the course of the Remedial Design, Respondents shall notify the Response Agencies in writing of any changes or additions in the key personnel used to carry out such work, providing their names, titles, and qualifications. The Response Agencies shall have the same right to approve changes and additions to key personnel as they have hereunder regarding the initial notification. Replacement of any of Respondents' personnel shall not delay performance of the work under this Consent Order.

16. On or before the Effective Date of this Consent Order, Respondents shall designate a Project Coordinator who shall be responsible for administration of all Respondents' response actions required by the Consent Order. Respondents shall submit to the Response Agencies the designated Project Coordinator's name, address, telephone number, and qualifications. EPA and WDNR retain the right to disapprove of any Project Coordinator named by Respondents. If either Response Agency disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify the Response Agencies of that person's name and qualifications within seven (7) business days of the Response Agency's disapproval.

17. Receipt by Respondents' Project Coordinator of any notice or communication from the Response Agencies relating to this Consent Order shall constitute receipt by each Respondent. To the maximum extent possible, communications between the Respondents and the Response Agencies shall be directed to the Project Coordinators by mail or other written method of communication agreed to by the Project Coordinators, with copies to such other persons as EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

18. Respondents' Project Coordinator, or his/her designee, shall be on-site during all hours of work when field work is ongoing in Operable Unit 2, 3, 4 or 5 and shall be available at all reasonable times throughout the pendency of this Consent Order. If Respondents or their agents become aware of any conditions at Operable Unit 2, 3, 4 or 5 which may present an imminent and substantial endangerment to human health or welfare or the environment, they shall immediately notify the EPA and WDNR Project Coordinators. The absence of the EPA Project Coordinator and/or the WDNR Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work, unless specifically directed by the EPA Project Coordinator in consultation with the WDNR Project Coordinator.

19. The EPA Project Coordinator shall be responsible for overseeing the implementation of this Consent Order, in consultation with the WDNR Project Coordinator. EPA has designated James Hahnenberg (SR-6J) as the EPA Project Coordinator. The EPA Project Coordinator shall have the same authority as that vested in an On-Scene Coordinator and Remedial Project Manager by the NCP, including the authority to halt, conduct, or direct any response action required by this Consent Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Except as otherwise provided in this Consent Order, Respondents shall direct all submissions required by this Consent Order to the EPA Project Coordinator in accordance with Section XXV (Notices and Submissions).

20. The State designates Gregory Hill as the WDNR Project Coordinator. Except as otherwise provided in this Consent Order, Respondents shall direct all submissions required by this Consent Order to the WDNR Project Coordinator in accordance with Section XXV (Notices and Submissions).

21. The Response Agencies and Respondents shall have the right to change their respective designated Project Coordinator. The Response Agencies shall notify Respondents, and Respondents shall notify the Response Agencies, as early as possible before such a change is made, but in no case less than twenty-four (24) hours before such a change. The initial notification may be made orally, but it shall be promptly followed by a written notice.

IX. WORK TO BE PERFORMED

22. Activities. Respondents shall conduct activities and submit deliverables as provided by the Statement of Work ("SOW") (Attachment A) for performance of the RD, which is incorporated by reference. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance referenced in the SOW, as such guidance may be amended or modified by EPA. The tasks that Respondents must perform are described in the SOW and guidance. All work performed under this Consent Order shall be in accordance with the schedules herein and in schedules approved in the future by the Response Agencies, and in full accordance with the standards, specifications, and other requirements of the RD Work Plan and Pre-Design Sampling Plan, as initially approved or modified by the Response Agencies, and as may be amended or modified by the Response Agencies from time to time pursuant to this Consent Order.

23. Respondents' compliance with the Work requirements shall not foreclose the Response Agencies from seeking compliance with all other terms and conditions of this Consent Order.

24. To the extent that EPA informs Respondents that particular information is confidential, Respondents and their representatives and consultants shall treat and maintain such information as confidential.

25. Additional Work. In the event EPA, WDNR or the Respondents determine that additional Remedial Design work, not otherwise included in the SOW, including remedial investigatory work and engineering evaluation, is necessary to accomplish the objectives of this Consent Order, notification of additional work shall be provided to all Parties.

26. Additional work determined to be necessary by Respondents shall be subject to the written approval of the Response Agencies.

27. Additional work determined to be necessary by Respondents and approved by the Response Agencies, or determined to be necessary by EPA or WDNR and requested of Respondents, shall be completed by Respondents in accordance with the standards and specifications determined or approved by the Response Agencies. Respondents shall propose a schedule for additional work for approval by the Response Agencies. The Response Agencies may jointly modify or determine the schedule for additional work. Additional work shall be performed in a manner consistent with the purposes and objectives of this Consent Order, and conform with the requirements of this Section.

28. Supplemental Investigations. The parties acknowledge that Respondents may implement voluntary, supplemental work relating to OUs 2, 3, 4, and/or 5 or issues relating to remedial design not specifically covered herein. Such supplemental work shall be structured so as to not interfere with or delay completion of Respondents' primary obligations and deadlines as specified in this Order and the SOW. EPA and WDNR agree to review and comment promptly on such work generated by Respondents and to consider any recommendations made by Respondents. Review by EPA and WDNR of plans or other submissions otherwise required by this Order, however, shall take priority over review of supplemental work generated pursuant to this Paragraph.

29. Out-of-State Shipments. In the event of out-of-state shipments of hazardous substances, Respondents shall provide written notification to the Response Agencies and the appropriate environmental official of the state receiving hazardous substances prior to shipment of hazardous substances in quantities greater than ten (10) cubic yards from the Site to an out-of-state location. The notification shall include:

a. The name and location of the facility receiving the hazardous substances;

b. The type and quantity of the hazardous substances, including the Department of Transportation shipping code, if any;

c. The schedule for shipment of the hazardous substances;

d. The method of transportation; and

e. Any special procedures necessary to respond to an accidental release of the substances during transportation.

Respondents shall promptly notify the Response Agencies and the appropriate environmental official for the receiving state of any changes to the shipment plan.

X. PLANS AND SUBMISSIONS

30. Respondents shall submit the RD Work Plan, the Pre-Design Sampling Plan, and all other documents required by the SOW and by those Plans in both a hard copy and an electronic format.

31. All submissions under this Consent Order and under any plan required by this Consent Order shall be subject to review and approval by the Response Agencies. The Response Agencies shall respond to each submission in writing with a single integrated response. As a result of their review of a submission, the Response Agencies may: (a) approve the submission; (b) approve the submission with minor modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating the Response Agencies' comments; or (d) if a re-submission, disapprove the re-submission with the explanation for the disapproval, after which the Response Agencies may assume responsibility for performing all or any part of the response action.

32. In the event of approval or approval with minor modifications by the Response Agencies, Respondents shall proceed to take any action required by the submittal, as approved or modified by the Response Agencies.

33. Upon receipt of a notice of disapproval, Respondents shall, within forty-five (45) days or such longer time as specified by the Response Agencies in their notice of disapproval, correct the deficiencies and resubmit the submittal for approval. Notwithstanding the notice of disapproval, Respondents shall proceed, if so directed by the Response Agencies, to take any action required by any non-deficient portion of the submission that remains unaffected by the notice of disapproval and can be reasonably implemented in the interim.

34. If any re-submission is not approved by the Response Agencies, they may determine that Respondents are in violation of this Consent Order, unless Respondents invoke the procedures set forth in Section XV (Dispute Resolution) and the Response Agencies' determination is revised pursuant to that Section. Issues previously resolved pursuant to the procedures set forth in Section XV may not be re-disputed.

35. Neither failure of the Response Agencies to expressly approve or disapprove of Respondents' document within the specified time period nor the absence of comments shall be construed as approval of the document. In the event of subsequent disapproval of a revised document, the Response Agencies retain the right to terminate this Consent Order and perform additional studies or conduct a complete or partial Remedial Design.

36. For any document required to be submitted by the Respondents to the Response Agencies, within forty-five (45) days of receipt of the document, the Response Agencies shall provide written notification to Respondents of their approval, approval with minor modifications or disapproval, of the submission or any part thereof. If the Response Agencies require a longer review period, the Response Agencies shall so notify Respondents within thirty (30) days of receipt of the submitted document.

37. The Project Coordinators shall hold progress report meetings / telephone conferences twice a month unless such a meeting is deemed unnecessary by the Response Agencies. By mutual agreement, the Project Coordinators may hold meetings or telephone conferences at more frequent intervals.

38. Respondents shall provide written progress reports to the Response Agencies every month (or on any other schedule agreed to in writing by the Project Coordinators). These monthly progress reports shall include the following information:

a. A description of the actions which have been taken to comply with this Consent Order during the past month and work planned for the coming month;

b. All results of sampling and tests, including raw data and validated data, and all other investigation results received by the Respondents during the month, in the format prescribed by the Response Agencies;

c. Target and actual completion dates of each element of the RD, including project completion, with schedules relating such work to the overall project schedule for RD completion, and an explanation of any deviation or anticipated deviation from the schedule approved by the Response Agencies, and proposed method of mitigating such deviation;

d. A description of all problems encountered and any anticipated problems during the reporting period, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and,

e. Changes in key personnel.

39. Respondents shall submit the monthly progress reports, as both electronic files and hard copy files, to the Response Agencies by the tenth (10^{th}) day of every month following the Effective Date of this Consent Order.

XI. QUALITY ASSURANCE AND DATA AVAILABILITY

40. Quality Assurance. Respondents shall consult with the Response Agencies' Project Coordinators in planning any and all sampling and analysis required by the RD Work Plan and the Pre-Design Sampling Plan. Respondents shall assure that work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP") and guidance identified therein.

41. Respondents shall prepare preliminary and final QAPPs for submittal to the Response Agencies according to the schedule in the SOW. Respondents shall participate in a pre-QAPP meeting with the Response Agencies prior to submission of the preliminary QAPP to discuss its contents.

42. The QAPPs shall be subject to review, modification, and approval by the Response Agencies in accordance with Section X (Plans and Submissions).

43. Data Availability. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, pursuant to this Consent Order, shall be submitted in the format prescribed by the Response Agencies and made available to and submitted to the Response Agencies in the progress reports described in Section X of this Consent Order.

44. Respondents will verbally notify the Response Agencies at least fifteen (15) days prior to conducting significant field events (including any sampling, tests and other data generation) as described in the SOW, the RD Work Plan, and the Pre-Design Sampling Plan or conducted under any other provision in this Consent Order. Respondents shall allow split or duplicate samples to be taken by the Response Agencies (and their authorized representatives) of any samples collected by the Respondents in implementing this Consent Order. All split samples of Respondents' shall be analyzed by the methods identified in the EPA-approved QAPP.

45. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to the Response Agencies pursuant to the terms of this Consent Order

under 40 C.F.R. § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to the Response Agencies, it may be made available to the public by EPA or the State without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Operable Units 2, 3, 4 or 5 conditions, sampling, or monitoring.

46. In entering into this Consent Order, Respondents waive any objections to the quality of any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any Work Plan, Sampling Plan, or Implementation Plan approved by the Response Agencies. If Respondents object to any data relating to the RD, Respondents shall submit to the Response Agencies a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to the Response Agencies within thirty (30) days of the monthly progress report or such other report as may contain the data.

47. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or the work product doctrine. If a Respondent asserts such a privilege in lieu of providing documents, it shall inform the Response Agencies that it is claiming certain documents as privileged and shall, upon request, provide the Response Agencies with the following:

a. The title of the document;

b. The date of the document, record, or information;

c. The name and title of the author of the document, record, or information;

d. The name and title of each addressee and recipient;

e. A description of the contents of the document, record, or information; and

f. The privilege asserted by the Respondent.

48. Failure to challenge a Respondent's assertion of privilege by EPA or WDNR during the implementation of the RD does not waive the Response Agencies' right to challenge the assertion during the implementation of the Remedial Action.

XII. ACCESS

49. To the extent that Operable Units 2, 3, 4 or 5 or other on-site and off-site areas where work is to be performed are presently owned by parties other than Respondents, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owners within sixty (60) days of approval of the RD Work Plan. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Access agreements shall provide access for the Response Agencies and all authorized representatives of the Response Agencies. Respondents shall immediately notify the Response Agencies if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. The Response Agencies may

then assist Respondents in gaining access, to the extent necessary to effectuate the activities required by this Consent Order, using such means as the Response Agencies deem appropriate. All costs incurred, direct or indirect, by the United States or the State in obtaining such access including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation shall be considered Future Response Costs. In accordance with Paragraph 54 (Payment of Future Response Costs), Respondents may be required to reimburse the United States and the State for all such Future Response Costs.

50. At all reasonable times the Response Agencies and their authorized representatives shall have the authority to enter and freely move about all property owned by Respondents at Operable Units 2, 3, 4 and 5 and at any other on-site and off-site areas where work under this Consent Order, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to Operable Unit 2, 3, 4 or 5 pursuant to this Consent Order; reviewing Respondents' progress in carrying out the terms of this Consent Order; conducting tests as the Response Agencies or their authorized representatives deem necessary consistent with this Consent Order; using a camera, sound recording device or other documentary type equipment for purposes of documenting the Work; and verifying the data submitted to the Response Agencies by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order, subject to Paragraph Nos. 43-48. Nothing herein shall be interpreted as limiting or affecting the Response Agencies' right of entry or inspection authority under federal law or state law. All individuals with access to Operable Units 2, 3, 4 and 5 under this Paragraph shall comply with all approved health and safety plans.

XIII. COMPLIANCE WITH APPLICABLE LAWS

51. Respondents shall perform all Work under this Consent Order in compliance with applicable federal, state and local laws, ordinances, or regulations. In the event a conflict arises between these laws, ordinances, or regulations, Respondents shall comply with the more stringent law, ordinance, or regulation, unless otherwise approved by EPA.

52. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The standards and provisions of Section XVI (Force Majeure) shall govern delays in obtaining such permits. The Response Agencies shall cooperate with Respondents and endeavor to expedite the issuance of permits for off-site work within their respective jurisdictions.

XIV. PAYMENT OF RESPONSE COSTS

53. Initial Payment to the United States. Within thirty (30) days after the Effective Date, the Respondents shall pay a total of $600,000 to the Fox River Site Special Account within the EPA Hazardous Substance Superfund, as the EPA Past Cost Payment. The EPA Past Cost Payment shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

54. Payment of Future Response Costs.

a. Future Cost Payments to EPA. On a periodic basis, the United States will send Respondents a bill requiring payment that includes an EPA cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a U.S. Department of Justice cost summary, which reflects costs incurred by the U.S. Department of Justice and its contractors, if any. Respondents shall make all payments within forty-five (45) days of Respondents' receipt of each bill requiring payment, except as otherwise provided by Paragraph 55. Payments to EPA under this Subparagraph shall be deposited in the Fox River Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

b. Future Cost Payments to the State. On a periodic basis, the State will send Respondents a bill requiring payment that includes a WDNR cost summary, which includes direct and indirect costs incurred by WDNR and its contractors, and a Wisconsin Department of Justice cost summary, which reflects costs incurred by the Wisconsin Department of Justice and its contractors, if any. Respondents shall make all payments within forty-five (45) days of Respondents' receipt of each bill requiring payment, except as otherwise provided by Paragraph 55.

55. Disputes Regarding Future Response Costs. Respondents may contest payment of any Future Response Costs under Paragraph 54 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Notice of any such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or to the State (if the State's accounting is being disputed) pursuant to Section XXV (Notices and Submissions). Any such notice of objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, all uncontested Future Response Costs shall immediately be paid to the United States or the State in the manner described in Paragraph 56. Upon submitting a notice of objection, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If the United States or the State prevails in the dispute, within ten (10) days of the resolution of the dispute, all sums due (with accrued Interest) shall be paid to EPA (if the United States' cost are disputed) or to the State (if the State's costs are disputed) in the manner described in Paragraph 56. If Respondents prevail concerning any aspect of the contested costs, the portion of the costs (plus associated accrued Interest) for which they did not prevail shall be disbursed to EPA or the State, as appropriate, in the manner described in Paragraph 56; and the amount that was successfully contested need not be paid to EPA or to the State. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding reimbursement of the United States and the State for their Future Response Costs.

56. Payment Instructions.

a. Payments to EPA. All payments to EPA under this Section shall be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, Fox River Site Special Account." All payments to EPA under Section XVII (Stipulated Penalties) shall be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund." Each check shall also: (1) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/3; (2) indicate that the payment is being made pursuant to this Consent Order; and (3) be sent to:

U.S. Environmental Protection Agency, Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

At the time of payment, Respondents shall ensure that notice that payment has been made is sent to DOJ and EPA in accordance with Section XXV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

The payments deposited in the Fox River Site Special Account under this Consent Order shall be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

b. Payments to the State. All payments to the State under this Section or under Section XVII (Stipulated Penalties) shall: (1) be made by a certified or cashier's check or checks made payable to "Wisconsin Department of Natural Resources;" (2) reference the Lower Fox River and Green Bay Site; (3) indicate that the payment is being made pursuant to this Consent Order; and (4) be sent to:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921	101 S. Webster St.
Madison, WI 53707-7921	Madison, WI 53703
(Regular Mail)	(Over-Night Mail)

At the time of payment, Respondents shall ensure that notice that payment has been made is sent to the State in accordance with Section XXV (Notices and Submissions).

XV. DISPUTE RESOLUTION

57. The parties to this Consent Order shall attempt to resolve, expeditiously, informally, and in good faith, any disagreements concerning this Consent Order.

58. Any disputes concerning activities or deliverables required under this Consent Order shall be resolved as follows: Respondents shall notify the Response Agencies in writing of their objection(s) within fourteen (14) calendar days of receiving notice of the Response Agencies' action giving rise to the dispute. The Parties may agree in writing to extend this time period to provide additional time for informal discussion of the dispute. Respondents' written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which Respondents rely. The Response Agencies shall submit their Statement of Position, including supporting documentation, no later than fourteen (14) calendar days after receipt of Respondents' written notice of dispute. Respondents may submit a response to the Response Agencies' Statement of Position within five (5) business days after receipt of the Statement. During the five (5) business days following the deadline for the Respondents' response to the Response Agencies' Statement of Position, the parties shall

attempt to negotiate, in good faith, a resolution of their differences. The time periods for exchange of written documents may be extended by agreement of all Parties.

59. An administrative record of any dispute under this Section shall be maintained by EPA and shall contain the notice of objections and accompanying materials, the Statement of Position, all materials exchanged during the dispute resolution process (including any independent expert review information pertinent to the dispute), any other correspondence between the Response Agencies and Respondents regarding the dispute, and all supporting documentation. The administrative record shall be available for inspection by all parties. If the Response Agencies do not concur with the position of Respondents, the Division Director for the Office of Superfund, EPA Region V, in consultation with an appropriate WDNR representative, shall resolve the dispute based upon the administrative record and consistent with the terms and objectives of this Consent Order, and shall provide written notification of such resolution to Respondents. If Respondents engage an independent expert to review a technical issue relating to the dispute, Respondents will be afforded an opportunity to meet and present their position to the Division Director of the Office of Superfund, EPA Region V, and an appropriate WDNR representative, prior to a decision being made to resolve the dispute.

60. Respondents' obligations under this Consent Order, other than the obligations affected by the dispute, shall not be tolled by submission of any objection for dispute resolution under this Section. Elements of Work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Statement of Work. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVI. FORCE MAJEURE

61. Respondents agree to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a *force majeure*. For purposes of this Consent Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the response actions or increased cost of performance.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a *force majeure* event, Respondents shall notify the Response Agencies orally within seven (7) business days of when Respondents first knew that the event might cause a delay. Within fourteen (14) calendar days thereafter, Respondents shall provide to the Response Agencies in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondents' opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

63. If EPA, following consultation with the State, agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Consent Order that are affected by the *force majeure* event will be extended by the Response Agencies for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA, following consultation with the State, does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA, following consultation with the State, agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

64. Respondents shall be liable for payment into the Hazardous Substances Superfund administered by EPA of the sums set forth below as stipulated penalties for each week or part thereof that Respondents fail to comply with a work schedule or payment schedule in accordance with the requirements contained in this Consent Order, unless the EPA, following consultation with the State, determines that such a failure or delay is attributable to *force majeure* as defined in Section XVI or is otherwise approved by EPA. Such sums shall be due and payable within thirty (30) days of receipt of written notification from EPA specifically identifying the noncompliance and assessing penalties, unless Respondents invoke the procedures of Section XV (Dispute Resolution). For failure to submit the RD Work Plan or the Pre-Design Sampling Plan as required by this Consent Order, stipulated penalties shall accrue in the amount of $1,000 per day for the first seven (7) days and $2,500 per day for each day thereafter. Stipulated penalties for all other violations of this Consent Order shall accrue in the amount of $1,000 for the first week or part thereof, and $1,500 for each week or part thereof thereafter. Stipulated penalties shall begin to accrue on the day that performance is due or a violation occurs and extends through the period of correction. Stipulated penalties for late payment or non-payment of Future Response Costs owed to the State shall be paid to the State under Subparagraph 56.b. All other stipulated penalties shall be paid to EPA under Subparagraph 56.a.

65. The stipulated penalties set forth herein shall not preclude the Agencies from electing to pursue any other remedy or sanction because of Respondents' failure to comply with any of the terms of this Consent Order, including a suit to enforce the terms of this Consent Order. Said stipulated penalties shall not preclude EPA from seeking statutory penalties up to the amount authorized by law if Respondents fail to comply with any requirements of this Consent Order. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Consent Order.

66. Upon receipt of written demand from EPA, Respondents shall make payment to EPA within thirty (30) days and Interest shall accrue on late payments. Payments shall be made in accordance with instructions provided by EPA in the written demand. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest.

67. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of any work required under this Consent Order. Stipulated penalties shall accrue during any dispute resolution period concerning the particular penalties at issue, but need not be paid until fifteen (15) days after the dispute is

resolved by agreement or by receipt of EPA's decision. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

XVIII. COVENANTS NOT TO SUE BY EPA AND WDNR

68. a. In consideration of the actions that will be performed under the terms of this Consent Order, and except as otherwise specifically provided in this Consent Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work.

b. In consideration of the actions that will be performed under the terms of this Consent Order, and except as otherwise specifically provided in this Consent Order, WDNR covenants not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Wisconsin statutory or common law, for performance of the Work.

c. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Consent Order.

d. These covenants not to sue extend only to Respondents and do not extend to any other person; provided, however, that these covenants not to sue (and the reservations thereto) shall also apply to: (i) Fort James Corporation; (ii) the successors and assigns of the Respondents and Fort James Corporation, but only to the extent that the alleged liability of the successor or assign is based on the alleged liability of the Respondents or Fort James Corporation; and (iii) the officers, directors, and employees of the Respondents and Fort James Corporation, but only to the extent that the alleged liability of the director, officer or employee is based on said person's status as an officer or employee of the Respondents or Fort James Corporation, or as a result of conduct within the scope of such person's employment or authority.

XIX. RESERVATIONS OF RIGHTS BY EPA AND WDNR

69. Except as specifically provided in this Consent Order, and subject to the provisions of Paragraph 71, nothing herein shall limit the power and authority of EPA, the United States, or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, subject to the provisions of Paragraph 71, nothing herein shall prevent EPA or WDNR from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. Subject to the provisions of Paragraph 71, EPA and WDNR reserve, and this Consent Order is without prejudice to, all rights against Respondents and Fort James Corporation with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Consent Order;

b. liability for past or future response costs incurred or paid by the United States or the State for the Site (except for any Future Response Costs paid pursuant to this Consent Order);

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by EPA for costs of the Agency for Toxic Substances and Disease Registry related to the Site.

71. a. On December 10, 2001, the U.S. District Court for the Eastern District of Wisconsin entered a Consent Decree in the civil action entitled *United States and the State of Wisconsin v. Appleton Papers Inc. and NCR Corporation*, Case No. 01-C-0816 (E.D. Wis.) ("API/NCR Interim Decree"). The API/NCR Interim Decree included, *inter alia*, a temporary covenant not to sue under Paragraph 22 thereof. The Parties acknowledge that the API/NCR Interim Decree does not limit or otherwise affect: (i) the Response Agencies' rights to enforce the provisions of this Consent Order; or (ii) NCR's obligations as set forth in this Consent Order. Likewise, this Consent Order does not limit or otherwise affect the rights or obligations of the parties under the API/NCR Interim Decree, except as provided by this Paragraph.

b. Nothing in this Consent Order shall affect any covenants not to sue provided to Fort James Operating Company or Fort James Corporation by the July 22, 1999 Agreement Between the State of Wisconsin and Fort James Corporation, the May 26, 2000 EPA Administrative Order on Consent captioned In re Lower Fox River Sediment Management Unit 56/57 Removal Action, EPA Docket No. V-W-00-596, or the Consent Decree lodged on June 20, 2002 in the civil action entitled United States of America and State of Wisconsin v. Fort James Operating Company, Civ. Act. No. 02-C-0602 (E.D. Wis.).

c. EPA, the State, Fort James Operating Company, and Fort James Corporation hereby terminate the January 29, 2003 Administrative Order on Consent captioned In re Lower Fox River and Green Bay Site Contaminant Delineation, CERCLA Docket No. V-W-03-C-731.

72. Work Takeover. In the event EPA, in consultation with WDNR, determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or WDNR may assume the performance of all or any portion of the Work as the Response Agencies determine necessary. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph shall be considered Future Response Costs. In accordance with Paragraph 54 (Payment of Future Response Costs), Respondents may be required to reimburse the United States and the State for all such Future Response Costs. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the

Work is warranted under this Paragraph. Notwithstanding any other provision of this Consent Order, EPA and WDNR retain all authority and reserve all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENTS AND FORT JAMES CORPORATION

73. Subject to the reservations in Paragraphs 75 and 76, Respondents and Fort James Corporation covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the EPA Past Cost Payment, the Work (including all Future Response Costs paid under this Consent Order), or this Consent Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the EPA Past Cost Payment or the Work, including any claim under the United States Constitution, the Constitution of the State of Wisconsin, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the EPA Past Cost Payment or the Work.

74. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 70(b), (c), and (e) – (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. Respondents reserve, and this Consent Order is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the Response Agencies' selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

76. Respondents reserve, and this Consent Order is without prejudice to, claims against the State, subject to the provisions of Wis. Stats. § 893.82, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such

claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined under Wisconsin law; nor shall any such claim include a claim based on the Response Agencies' selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

77. Nothing in this Consent Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. OTHER CLAIMS

78. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from Operable Units 2, 3, 4, and/or 5.

79. Respondents specifically reserve all rights and defenses that they may have, including but not limited to any rights to contest any Findings of Fact or Conclusions of Law and Determinations set forth in Sections V and VI of this Consent Order in any proceeding other than an action brought by EPA or the State to enforce this Consent Order. Under this Consent Order, Respondents specifically reserve any right they may have to seek review of the remedial action selected in the ROD as authorized by CERCLA Section 113(h), 42 U.S.C. § 9613(h), other than in an action brought by EPA or the State to enforce this Consent Order.

80. Each party to this Consent Order shall bear its own costs and attorneys fees.

XXII. CONTRIBUTION PROTECTION AND EFFECT OF SETTLEMENT

81. The Parties agree that Respondents and Fort James Corporation are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are the Work. Nothing in this Consent Order precludes the United States, the State, or Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Consent Order for indemnification, contribution, or cost recovery.

82. The Parties agree and acknowledge that the Response Agencies shall recognize that Respondents are entitled to full credit for the EPA Past Cost Payment and all response costs incurred in performance of the Work (including all Future Response Costs paid under this Consent Order), with such credit to be applied against Respondents' liabilities for response costs at the Site; provided, however, that the credit ultimately recognized shall take into account the amount of any recoveries by Respondents of any portion of such payments from other liable persons, such as through a recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 96707 and 9613.

XXIII. INDEMNIFICATION

83. Respondents shall indemnify, save and hold harmless the United States, the State, and their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Consent Order. In addition, Respondents agree to pay the United States and/or the State all costs incurred by the United States and/or the State, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States and/or the State based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Order. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Consent Order. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

84. The United States and/or the State shall give Respondents notice of any claim for which the United States and/or the State plan to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

85. Respondents waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States and/or the State, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. RECORD PRESERVATION

86. Respondents shall preserve all records and documents which relate to implementation of the RD at Operable Units 2, 3, 4, and/or 5 for a minimum of ten (10) years following completion of Remedial Action construction. Respondents shall acquire and retain copies of all documents that relate to Remedial Design for Operable Units 2, 3, 4, and/or 5 and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify the Response Agencies at least ninety (90) days before the documents are scheduled to be destroyed. If EPA or WDNR request that the documents be saved, Respondents shall, at no cost to the Response Agencies, give the Response Agencies the documents or copies of the documents.

XXV. NOTICES AND SUBMISSIONS

87. Documents, including but not limited to reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondents, EPA, and WDNR designate in writing:

As to the United States:

James Hahnenberg
EPA Project Coordinator
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: SR-6J
Chicago, IL 60604-3590
Phone: (312) 353-4213
FAX: (312) 886-4071
E-mail: Hahnenberg.James@epa.gov

with a copy to:

Peter Felitti (C-14J)
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Phone: (312) 886-5114
FAX: (312) 886-0747
E-mail: felitti.peter@epa.gov

As to the State:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921
(Regular Mail)

101 S. Webster St.
Madison, WI 53703
(Over-Night Mail)

Phone: (608) 267-9352
FAX: (608) 267-2800
E-mail: hillg@dnr.state.wi.us

As to Fort James Operating Company and Fort James Corporation:

J. Michael Davis
Principal Counsel - Environmental
Georgia-Pacific Corporation
133 Peachtree Street, N.E.
Atlanta, GA 30303

with a copy to

John Hanson
Beveridge & Diamond, P.C.
1350 I Street, N.W. - Suite 700
Washington, DC 20005

As to NCR:

Jon Hoak
NCR Corporation
1700 South Patterson Blvd., WHQ-5
Dayton, OH 45479

with a copy to

J. Andrew Schlickman
Sidley Austin Brown & Wood LLP
10 South Dearborn Street
Chicago, IL 60603

XXVI. EFFECTIVE DATE OF CONSENT ORDER

88. This Consent Order shall become effective upon receipt by Respondents of the Consent Order signed by the Director of the Superfund Division, EPA, Region 5 and the Secretary of the WDNR.

XXVII. COMMUNITY RELATIONS

89. Respondents shall cooperate with the Response Agencies in providing RD information to the public. If requested by the Response Agencies, Respondents shall participate in the preparation of all RD information disseminated to the public pertaining to Operable Units 2, 3, 4, and/or 5.

XXVIII. MODIFICATION OF CONSENT ORDER

90. In addition to the procedures set forth in Section VIII (Project Coordinators), Section IX (Work to be Performed), Section XV (Dispute Resolution) and Section XVI (Force Majeure), this Consent Order may be amended by mutual agreement of the Parties. Amendments shall be in writing and shall become effective on the date of execution by the Response Agencies. Project Coordinators do not have the authority to sign amendments to the Consent Order.

91. No informal advice, guidance, suggestions, or comments by the Response Agencies regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by the Response Agencies, incorporated into this Consent Order; provided, however, any time frames under this Consent Order can be extended by the Response Agencies' Project Coordinators in writing.

XXIX. NOTICE OF COMPLETION

92. At the request of Respondents, the Response Agencies shall promptly determine whether all actions have been performed in accordance with this Consent Order, except for certain continuing obligations required by this Consent Order (e.g., record retention). Any request shall demonstrate in writing that such actions have been performed in accordance with

this Consent Order and shall be accompanied by the following attestation by a responsible official for the Respondents (or Fort James Corporation): "I certify that the information contained in or accompanying this certification is true, accurate, and complete." Upon such determination by the Response Agencies, the Response Agencies will promptly provide written notice to Respondents. Such notice will not be unreasonably withheld. If the Response Agencies determine that any required response activities have not been completed in accordance with this Consent Order, they will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

XXX. MISCELLANEOUS

93. In accordance with the SOW, Respondents may recommend to the Response Agencies that the Response Agencies adopt the contingent remedies in the ROD or any alternate remedies. At that time, Respondents shall provide the Response Agencies all documentation supporting such recommendation, including without limitation the results of any independent expert review. The Response Agencies will consider any such recommendation made by Respondents.

94. Until such time as the Response Agencies approve the RD Work Plan (as defined in the SOW), but no later than June 15, 2004 (or such later date as agreed upon in writing by the Response Agencies), either and/or both Respondent(s) may elect to withdraw from the obligation to perform the Work under this Consent Order and the SOW, except for those provisions that relate to pre-design sampling and analysis ("Task 3" of the SOW). At the time of such election, if made, the SOW shall be deemed amended to include only those obligations relating to Task 3 in the SOW (Pre-Design Sampling). This Consent Order shall remain in effect only to the extent necessary to complete the pre-design sampling and analysis. Without limiting the foregoing, such an election will excuse the withdrawing Respondent(s) from submitting the RD Work Plan and from paying Future Response Costs under this Consent Order for any work other than that related to the pre-design sampling and analysis. Section XVIII (Covenant Not to Sue by EPA) and Section XXII (Contribution Protection and Effect of Settlement) shall likewise be limited to pre-design sampling and analysis as to the withdrawing Respondent(s) (and as to the Fort James Corporation, if Respondent Fort James operating Company elects to withdraw). If Respondents have failed to pay the Initial Payment to the United States required by Paragraph 53 at the time they elect to withdraw from the obligation to perform the Work under this Consent Order and the SOW, Respondents shall not be relieved from their obligation to make such payment or from any stipulated penalties incurred for late payment. The Response Agencies shall use their best efforts to respond to the Respondents' draft RD Work Plan within forty-five (45) days of receipt.

95. In accordance with the provisions set forth in Attachment C to this Consent Order, the Response Agencies intend to devote up to $6.5 million payable under the API/NCR Interim Decree for performance of the Remedial Design for OUs 2-5, as permitted by the API/NCR Interim Decree.

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay

AGREED AS STATED ABOVE:

FOR NCR CORPORATION

Date: February 26, 2004

Signature

Typed Name: Jon S. Hoak

Title: Senior Vice President and General Counsel

Address: 1700 South Patterson Blvd.

Dayton, OH 45479

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay

AGREED AS STATED ABOVE:

FOR FORT JAMES OPERATING COMPANY, INC.

Date: February 16, 2004

Signature

Typed Name: Susan F. Moore

Title: Vice President, Environmental Policy

Address: 133 Peachtree Street NE 9th Floor

Atlanta, GA 30303

THE UNDERSIGNED PERSON hereby assents to the covenants set forth in Section XX (Covenant Not to Sue by Respondents and Fort James Corporation) of this Consent Order:

FOR FORT JAMES CORPORATION

Date: February 16, 2004

Signature

Typed Name: Susan F. Moore

Title: Vice President, Environmental Policy

Address: 133 Peachtree Street NE 9th Floor

Atlanta, GA 30303

IN THE MATTER OF:
Administrative Order by Consent
Lower Fox River and Green Bay

IT IS SO ORDERED AND AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____ DATE: 3-3-04

Richard Karl, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

BY: _____ DATE: 3/5/09

Scott Hassett, Secretary

Consent Order Attachment A

Statement of Work

STATEMENT OF WORK
FOR THE REMEDIAL DESIGN FOR
OPERABLE UNITS 2, 3, 4 AND 5 AT THE
LOWER FOX RIVER AND GREEN BAY SITE
BROWN, OUTAGAMIE, AND WINNEBAGO COUNTIES, WISCONSIN

I. PURPOSE

This Statement of Work (SOW) sets forth the requirements for the Remedial Design for Operable Units 2, 3, 4 and 5 (RD) for all components of the remedial action set forth in the Records of Decision (RODs) for the Lower Fox River and Green Bay Site (Site).[1] The ROD for Operable Units (OUs) 1 and 2 was signed by the Deputy Administrator, Water Division, Wisconsin Department of Natural Resources (WDNR), and the Superfund Director of the U.S. Environmental Protection Agency Region 5 (EPA) on December 18, 2002 and December 20, 2002, respectively. The ROD for OUs 3, 4 and 5 was signed by the Deputy Administrator, WDNR Water Division, and the Superfund Director of EPA Region 5 on June 30, 2003. This SOW addresses only the RD for OUs 2 - 5. The Remedial Design for OU 1 is being addressed under a separate SOW and Consent Order. Respondents, working collaboratively with WDNR and EPA (Response Agencies) as set forth herein, will develop the RD consistent with the RODs, the Administrative Order on Consent (AOC) to which this SOW is attached, the Remedial Design Work Plan to be developed hereunder, and EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A) for designing remedial actions. The AOC and this SOW do not require the Respondents to implement the remedy.

II. DESCRIPTION OF THE REMEDIAL ACTION / PERFORMANCE STANDARDS

The Respondents shall design the remedy necessary to meet the Performance Standards and specifications set forth in the RODs for OUs 2, 3, 4 and 5, as discussed below. The Remedial Design shall address the timing and sequencing of the remedial action to account for the multifaceted and multi-year components of the remedy. The Response Agencies and Respondents will collaboratively seek to resolve key technical and implementation issues through the timely use of Work Groups. Appropriate consideration

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[1] "Operable Unit 2" or "OU2" is the portion of the Lower Fox River (and the underlying River sediment) starting at the Upper Appleton Dam downstream to the Little Rapids Dam. "Operable Units 3, 4, and 5" or "OUs 3 - 5" is the portion of the Lower Fox River (and the underlying River sediment) starting at the Little Rapids Dam downstream to the bay of Green Bay and includes all of Green Bay from the city of Green Bay to the point where Green Bay enters Lake Michigan.

of the contingent remedy provisions of the ROD, and such other work as proposed and/or conducted by Respondent under the AOC, may also be incorporated into the Remedial Design process.

OPERABLE UNIT 2 (EXCLUDING DEPOSIT DD). The selected remedy for OU 2 is Monitored Natural Recovery (MNR). An institutional control plan and a long-term monitoring plan for PCB and possibly mercury levels in water, sediment, invertebrates, fish and birds will be developed during the RD. Institutional controls may include access restrictions, land use or water use restrictions, dredging moratoriums, fish consumption advisories, and domestic water supply restrictions. Land and water use restrictions and access restrictions may require local or state legislative action to prevent inappropriate use or development of contaminated areas. Plans for monitoring will be developed during the Remedial Design and modified during and after the upstream construction in OU 1, as appropriate. The monitoring program will be developed to effectively measure achievement of and progress towards Remedial Action Objectives (RAOs).

OPERABLE UNITS 3 AND 4 (AND OU 2 DEPOSIT DD). The selected remedy for OUs 3 and 4 includes the removal of sediment with PCB concentrations greater than the 1 ppm remedial action level (RAL) using an environmental dredge, followed by dewatering and off-site disposal of the sediment. This remedy includes the following:

- **Site Mobilization and Preparation.** The staging area(s) for these Operable Units will be determined during the design stage. Site preparation at the staging area(s) will include collecting soil samples for design and baseline characterization, securing the onshore property area for equipment staging, and constructing the necessary onshore facilities for sediment management and transportation.
- **Sediment Removal.** Sediment removal will be conducted using a dredge (e.g., cutterhead or horizontal auger or other method) or other suitable sediment removal equipment.
- **Sediment Dewatering.** Sediment that is removed will require dewatering.
- **Sediment Disposal.** Sediment disposal includes the transportation of the sediment to a dedicated NR 500 engineered landfill.

- **Water Treatment.** Unless other arrangements can be made, water treatment will consist of flocculation, clarification, sand filtration, and treatment through activated carbon filters.
- **Demobilization and Site Restoration.** Demobilization and site restoration will involve removing all equipment from the staging and work areas and restoring the site to, at a minimum, its original condition before construction of the staging area commenced.
- **Institutional Controls and Monitoring.** Plans for monitoring of various media (e.g., water, tissue, and sediment) to determine the effectiveness of the overall remedy will be developed during RD. Baseline monitoring will include pre- and post-remedial sampling of water, sediment, and biological tissue. Monitoring during implementation will include air and surface water sampling. Plans for monitoring during and after construction will be developed during the Remedial Design and modified during and after construction, as appropriate. A long-term monitoring and institutional control plan will be developed as part of the RD. Institutional controls may include access restrictions, land use or water use restrictions, dredging moratoriums, fish consumption advisories, and domestic water supply restrictions. Land and water use restrictions and access restrictions may require local or state legislative action to prevent inappropriate use or development of contaminated areas.
- **Achievement of Remedial Action Level Objective.** The mass and volume to be remediated will be determined by (1) establishing a dredge elevation based on a RAL of 1 ppm or, if sampling conducted after dredging is completed shows that the 1 ppm RAL has not been achieved, (2) by achieving a Surface Weighted Average Concentration (SWAC) of 0.26 ppm for OU 3 and 0.25 ppm for OU 4.[2] Sampling will be conducted to determine if the RAL or SWAC have been achieved. The SWAC will be computed following completion of the dredging with samples collected from 0 to 10 centimeters (cm) below mudline. The SWAC is an acceptable level of performance for determining completion of the remedial action. If the appropriate SWAC has not been achieved in either OU 3 or OU 4, the ROD provides for certain options to further reduce risk. These

[2] The Parties recognize that an Explanation of Significant Differences or ROD Amendment issued by the Response Agencies could result in an alternative RAL or SWAC.

options include additional dredging and placement of a sand cover over dredged areas to reduce surficial concentrations such that a SWAC is achieved.

OPERABLE UNIT 5. The selected remedy for OU 5 includes Monitored Natural Recovery (MNR) with institutional controls and limited dredging. This remedy includes the following:

- **Additional Sampling / Dredging.** Additional sampling near the mouth of the Lower Fox River will be conducted to identify sediments with PCB concentrations greater than 1 ppm. Any PCB-contaminated sediments adjacent to the River mouth with concentrations greater than 1 ppm will be dredged as an extension of the OU 4 removal.
- **Institutional Controls and Monitoring.** An institutional control plan and a long-term monitoring plan for PCB and possibly mercury levels in water, sediment, invertebrates, fish and birds will be developed during RD. Institutional controls may include access restrictions, land use or water use restrictions, dredging moratoriums, fish consumption advisories, and domestic water supply restrictions. Land and water use restrictions and access restrictions may require local or state legislative action to prevent inappropriate use or development of contaminated areas. Plans for monitoring will be developed during the Remedial Design and modified during and after the upstream construction in OUs 3 and 4, as appropriate. The monitoring program will be developed to effectively measure achievement of and progress towards Remedial Action Objectives (RAOs).

CONTINGENT REMEDY – *IN SITU* CAPPING. Capping of certain areas in OUs 3 and 4 may be proposed during design and will be given consideration by the Response Agencies, consistent with the requirements of the ROD for selection of the contingent remedy. The specific areas where caps could be placed may be determined during RD.

III. SCOPE OF REMEDIAL DESIGN

The Remedial Design shall be consistent with the RODs for OUs 2 - 5. Specific tasks are described below.

Task 1: Remedial Design Work Plan

No later than March 31, 2004, Respondents will submit a complete Remedial Design Work Plan (RD Work Plan) to the Response Agencies for their review and approval. The RD Work Plan shall discuss how each component of the remedy for OUs 2 - 5 will be addressed, identify tasks necessary for completing the pre-design investigations, including baseline condition monitoring, and design work required by the ROD for OUs 2 - 5, and provide an overall management strategy for completion of such tasks. The RD Work Plan will also include a project schedule for each major activity and submission of deliverables to be generated during the Remedial Design. The RD Work Plan shall document the responsibility and authority of all organizations and key personnel involved with the design and shall include a description of qualifications of key personnel directing the Remedial Design, including contractor personnel.

Respondents shall submit the RD Work Plan to the Response Agencies for review and approval in accordance with the Consent Order and Section V of this SOW. Once the Response Agencies approve the RD Work Plan, Respondents shall implement the plan in accordance with the approved schedule therein. The RD Work Plan and schedule may require amendment if new information is discovered that was not anticipated at the time the Work Plan was developed, or if any changes are made in design or management strategy.

Task 2: Review and Analysis of Existing Data

While developing the RD Work Plan, Respondents will compile existing available data into a suitable geographical information system (GIS) platform to provide a detailed assessment of the extent of contamination, sources of contamination, bathymetry and sub-bottom profiles of the river channel and side-slope areas, and location of candidate areas for active remediation or MNR, based on the RODs. This effort will evaluate the need for additional data. Additionally, information on future land use planning, including future dredging and channel de-authorization plans, and Water Resources Development Act (WRDA) feasibility study plans and activities, will be compiled.

Task 3: Pre-design Sampling

No later than March 31, 2004, Respondents will submit a Pre-design Sampling Plan for OUs 2 - 5 to the Response Agencies for their review and approval. The Pre-design Sampling Plan will provide detailed descriptions for pre-design field and analytical evaluations of sediment in OUs 2 - 5, and will consist of a

Sampling and Analysis Plan (SAP), a Quality Assurance Project Plan (QAPP), and a Health and Safety Plan (HSP). The Pre-design Sampling Plan either will incorporate existing baseline bathymetric and related surveys or will propose detailed modifications or additions to such surveys to be performed by Respondents. Respondents will submit any necessary modifications to these documents for review and approval prior to implementing the pre-design sampling activities. Upon approval of the Pre-Design Sampling Plan by the Response Agencies, Respondents shall perform the tasks set forth therein in accordance with the applicable schedules in the Pre-design Sampling Plan and RD Work Plan.

The overall objectives of the pre-design sampling include:

- Filling in data gaps identified following examination of existing data;
- Determining the area and volume of sediment requiring remediation;
- Providing sufficiently comprehensive data to allow implementation of dredging, dewatering, transportation, treatment and/or disposal options.

Locations for pre-design sampling will be identified based on available information regarding sediment stratigraphy and geomorphology, current and historical contamination sources, and existing sediment quality data. Initial geomorphology mapping of sediment thickness in the river may be performed to further characterize sediment distribution patterns and to optimize the placement of sediment sampling locations. Core stations will be located to optimize characterization of the volume of surface and/or subsurface sediment contamination likely requiring active remediation, consistent with ROD requirements. The Pre-design Sampling Plan will identify the sample locations and the basis for their selection.

Raw data and validated sample results will be submitted in accordance with provisions of the AOC. Respondents will evaluate existing data and the data collected in the pre-design sampling in order to meet the following data evaluation objectives:

- To define the area and volume of sediment requiring remediation through spatial resolution of surface and subsurface PCB chemical concentration distributions;
- To define the physical and chemical nature and features of the sediment (e.g., grain size, total organic carbon, sediment stability, and load-bearing properties) and the river channel (e.g., currents, slope and

engineered structures) necessary for implementation of the remedy described in the ROD and, if appropriate, the contingent remedy (capping);

- To assess on a preliminary basis sediment contaminant mobility in connection with dredging and capping, including: column leach tests, pore water test, standard elutriate test, modified elutriate test, and column settling test;
- To establish baseline conditions of those features that may be altered during the remedial action, such as bathymetry and sediment quality;
- To evaluate potential integration of current and planned property uses (e.g., WRDA authorities, maintenance dredging, and piers/berthing areas) with prospective remedial actions; and
- To determine additional data needed for remedial design.

Task 4: Basis of Design Report

Within 180 days of the completion of pre-design sampling and validation of data, Respondents shall submit a Basis of Design Report for review and approval by the Response Agencies. The Basis of Design Report shall include all information collected during the pre-design investigation, a summary of information collected and analyses conducted to date for the Lower Fox River Site design (e.g., OU 1 work information), as well as appropriate literature and design references.

The Basis of Design Report shall include preliminary delineations of remediation areas and technologies, and preliminary identifications of dewatering, transportation, treatment and disposal technologies and locations. The Basis of Design Report will also define volumes and areas to be dredged, and will contain analyses of information and data supporting such designation and volumes. The designation of sediment deposits for removal will be subject to approval by the Response Agencies and be consistent with the RODs for OUs 2 - 5. The Basis of Design Report shall identify dewatering, transportation, treatment and disposal options, including Respondents' recommendations regarding such design elements. The approved Basis of Design Report shall reflect the Response Agencies' selected design elements (subject to later modification as appropriate).

After approval of the Basis of Design Report (or as otherwise agreed to by the Parties), the Response Agencies and Respondents will together begin an outreach effort with respect to those parties with an interest in dewatering, transportation, treatment and disposal options identified in the report (stakeholder outreach).

In conjunction with the Basis of Design Report, Respondents may present information relating to alternative remedial measures for Response Agencies' approval, including but not limited to the contingent remedy set forth in the ROD (see Section IV, below). If modifications to the Basis of Design Report are necessary due to information obtained during stakeholder outreach, then the Basis of Design report will be modified when that information has been evaluated.

Task 5: Remedial Design

Following completion and approval of the Basis of Design Report, Respondents shall prepare construction plans and specifications to implement the Remedial Action at OUs 2, 3, 4 and 5, as described in the ROD, this SOW and the RD Work Plan, and consistent with the approved Basis of Design Report. Such plans and specifications shall be submitted in accordance with the schedule set forth in Section V below. Subject to approval by the Response Agencies, Respondents may submit more than one set of design submittals reflecting different components of the Remedial Action. All design plans and specifications shall be developed consistent with EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A), except as otherwise specified in this SOW or the RD Work Plan, and shall demonstrate that the Remedial Action based on the final Remedial Design will meet the objectives of the Consent Order and the ROD, including all Performance Standards. Respondents shall meet regularly with the Response Agencies to discuss and work collaboratively on design issues.

A. Preliminary Design (30%)

Respondents shall submit the Preliminary Design for OUs 2, 3, 4 and 5 to the Response Agencies for review and approval when the design effort is approximately 30% complete. Portions of the Preliminary Design that may be completed prior to the entire Preliminary Design should be submitted as they are completed. The Preliminary Design submittal shall include or discuss, at a minimum, the following:

- Preliminary plans, drawings, and sketches, including design calculations;

- Determination of specific technologies for sediment dredging, dewatering, transportation and disposal of dredged sediments and associated wastewaters. These determinations will build upon previous engineering analyses;
- Results of studies and additional field sampling and analysis, if any, conducted after the Pre-Design sampling;
- Design assumptions and parameters, including design restrictions, process performance criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume), as applicable;
- Sediment Removal Verification/Capping Plan (see Paragraph E below) including the proposed cleanup verification methods (i.e., probing methods) and compliance with Applicable or Relevant and Appropriate Requirements (ARARs);
- Outline of required specifications;
- Proposed siting/locations of processes/construction activity;
- Proposed disposal locations based upon effectiveness, implementability and cost;
- Mitigation Plan to restore habitats that have been physically impacted by sediment removal equipment or soil excavation equipment (not including the soft sediment deposits themselves);
- Expected long-term monitoring and operation requirements;
- Real estate, easement, and permit requirements;
- Preliminary construction schedule, including contracting strategy;
- Significant new information from other projects and activities on the River (e.g., OU 1 activities) and elsewhere; and
- Draft adaptive management plan for the Remedial Action.

If available, additional sampling, analysis, and/or pilot studies necessary to supplement pre-design sampling and to provide additional information to modify the Basis of Design Report and remedial design documents will be incorporated into the Preliminary Design. This data may fill in any remaining site-

specific data gaps, potentially including further delineation of the area and volume of sediments requiring remediation, data necessary to further characterize prospective disposal site(s) (including physical, chemical, and biological characteristics), or any other data necessary to complete design activities.

B. Intermediate Design (60%)

Respondents shall submit an Intermediate Design when the design effort is 60% complete. The Intermediate Design shall be consistent with Response Agency approval of the Preliminary Design. The Intermediate Design documents will build on those elements listed for the Preliminary Design (30%) documents, and will also include the following:

- Modifications to Plans and specifications in the Preliminary Design (30%) in response to the Response Agencies' comments;
- Draft Construction Quality Assurance Project Plan (CQAPP) (see Paragraph E below);
- Draft Operation, Maintenance, and Monitoring Plan (OMMP) for OUs 2, 3, 4 and 5, as appropriate;
- Draft Monitoring Plan for OUs 2 and 5;[3]
- Capital and Operation and Maintenance Cost Estimate;
- Project Schedule for the construction and implementation of the remedial action; and
- The following supporting plans (see Paragraph E, below):
    - Health and Safety Plan
    - Contingency Plan.

C. Pre-Final Design (90%)

The Respondents shall submit the Pre-Final Design when the design effort is 90% complete. The Pre-Final Design shall be consistent with Response Agency approval of the Intermediate Design (60%). The Pre-Final Design submittals shall include those elements listed for the Preliminary Design and Intermediate Design, as well as the following:

- Construction Quality Assurance Project Plan;
- Final Health and Safety Plan;
- Final Contingency Plan;

[3] The RD Work Plan shall set forth the schedule for finalization of the OMMP for OUs 2 through 5, as appropriate, and the Monitoring Plan for OUs 2 and 5.

- Final Sediment Removal Verification / Capping Plan;
- Capital and Operation and Maintenance Cost Estimate. This cost estimate shall refine the Feasibility Study cost estimate to reflect the detail presented in the Pre-Final Design;
- Final Project Schedule for the construction and implementation of the Remedial Action addressed in this SOW which identifies timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones. Specific dates will assume and be dependant upon, a defined start date.

D. Final Design (100%)

The Respondents shall submit the Final Design when the design effort is 100% complete. The Final Design shall be consistent with Response Agency approval of the Pre-Final Design (90%) and shall include reproducible drawings and specifications suitable for bid advertisement. The Final Design submittals shall include those elements listed for the Pre-Final Design.

E. Content of Supporting Plans

1. Health and Safety Plan (HSP)

Respondents shall develop and submit to the Response Agencies for review and approval a site-specific HSP which is designed to protect construction personnel and area residents from physical, chemical, and other hazards posed by any work at the Site during the RA. The Health and Safety Plan shall follow OSHA requirements as outlined in 29 CFR §§ 1910 and 1926.

2. Contingency Plan

Respondents shall develop and submit to the Response Agencies for review and approval a Contingency Plan that describes the mitigation procedures they will use in the event of an accident or emergency at the Site. The Contingency Plan may be incorporated into the HSP. The final Contingency Plan shall be submitted prior to the start of construction, in accordance with the approved construction schedule. The Contingency Plan shall include, at a minimum, the following:

a. Name of the person or entity responsible for responding in the event of an emergency incident;

b. Plan and date to meet with the local community, including local, State and Federal agencies involved in the Remedial Action, as well as local emergency squads and hospitals; and,

c. First aid medical information

3. Construction Quality Assurance Project Plan (CQAPP)

Respondents shall develop and submit to the Response Agencies for review and approval a CQAPP which describes the site specific components of the quality assurance program that the Respondents shall use to ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The final CQAPP shall be submitted in accordance with the approved RA Work Plan schedule. The CQAPP shall contain, at a minimum, the following elements:

a. Responsibilities and authorities of all organizations and key personnel involved in the construction of the Remedial Action.

b. Qualifications of the Quality Assurance Official to demonstrate that he/she possesses the training and experience necessary to fulfill his/her identified responsibilities.

c. Protocols for sampling and testing used to monitor the remedial action.

d. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation.

e. Reporting requirements for CQAPP activities shall be described in detail in the CQAPP. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, and design acceptance reports, and final documentation. Provisions for the final storage of all OUs 2 - 5 cleanup records shall be presented in the CQAPP.

4. Sediment Removal Verification/Capping Plan

As a component of the CQAPP, Respondents shall develop and submit a Sediment Removal Verification/Capping Plan to the Response Agencies for review and approval. The purpose of the Sediment Removal Verification/Capping Plan is to provide a mechanism to ensure that Performance

Standards for the Remedial Action are met. Once approved, the Sediment Removal Verification/Capping Plan shall be implemented on the approved schedule. The Sediment Removal Verification/Capping Plan shall include, at a minimum:

a. Quality Assurance Project Plan (may be part of RA QAPP);

b. Health and Safety Plan (may be part of RA HSP); and

c. Field Sampling Plan.

IV. CONTINGENT REMEDY / SUPPLEMENTAL INVESTIGATIONS

If Respondents, consistent with the ROD capping contingency, propose capping any area as part of the final remedy, Respondents shall provide a detailed submittal with technical justification supporting such a proposal to the Response Agencies for review and approval. This submittal shall be consistent with ROD Sections 13.4 and 13.5 and all appropriate EPA Guidance, and in accordance with a schedule established in the approved RD Work Plan.

As provided in Paragraph 28 of the AOC, Respondents may undertake voluntary, supplemental, work relating to OUs 2, 3, 4, or 5, or to remedial design issues not specifically covered in the AOC and this SOW. The Response Agencies will review and comment promptly on such work and consider any recommendations made by Respondents based on such work.

If Respondents, based on investigation activities and assessments conducted during the design phase, propose that alternative remedial measures be designated by the Response Agencies for any portion of OUs 2 - 5, Respondents shall provide a detailed submittal with technical justification supporting such a proposal to the Response Agencies for review and approval. The submittal shall be consistent with all appropriate EPA Guidance. Approval of the proposal will require either an Explanation of Significant Differences or a ROD Amendment by the Response Agencies before it becomes effective. The submittal shall be in addition to all other submittals required by this SOW, and shall not delay the submittal of other design documents. Respondent may make a submittal proposing alternate remedial measures, and the Response Agencies will consider the submittal, either during design or after the Final Design is completed, but before remedial action commences in the portion(s) of OU 2 - 5 addressed by the submittal.

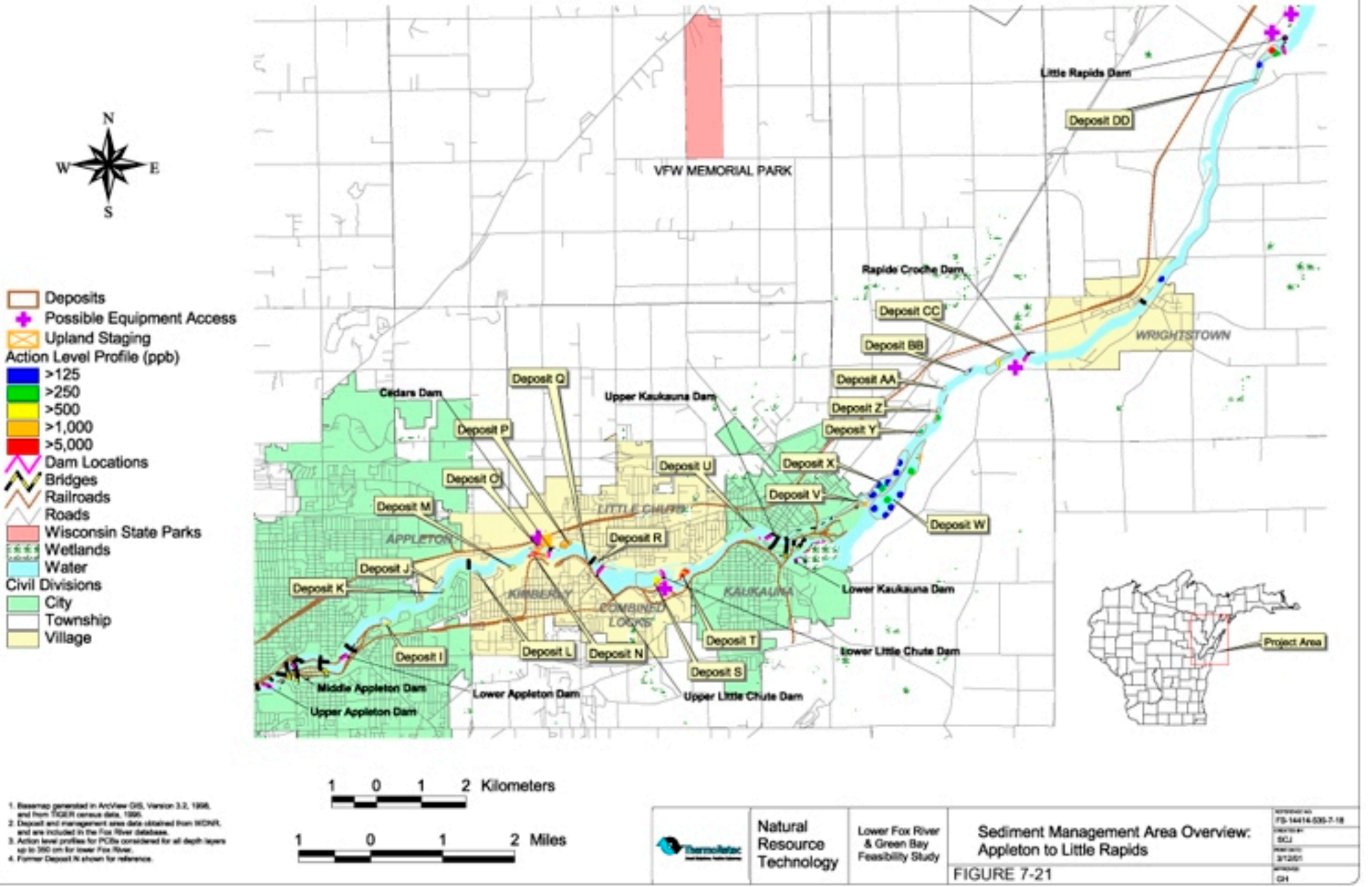
V SUMMARY OF MAJOR DELIVERABLES / SCHEDULE

A summary of the project schedule and reporting requirements for each task of the OUs 2 - 5 Remedial Action contained in this OU 2 - 5 RD SOW is presented below. Unless modified by the final RD Work Plan or otherwise approved in writing by the Project Coordinators, the project schedule will be as follows:

Deliverable / Milestone	Due Date (calendar days)
Pre-design Sampling Plan	March 31, 2004
RD Work Plan	March 31, 2004
Final RD Work Plan	As provided in the AOC.
Monthly Progress Reports	As described in the AOC.
Pre-design Sampling	Weather permitting, within Sixty (60) days of approval of the Pre-design Sampling Plan.
Basis of Design Report	One hundred eighty (180) days after receipt of validated data from the pre-design sampling investigation.
Preliminary Design (30%)	One hundred twenty (120) days after approval of the Basis of Design Report.
Intermediate Design (60%)	Ninety (90) days after approval of the Preliminary Design.
Pre-Final Design (90%)	Ninety (90) days after approval of the Intermediate Design.
Final Design (100%)	Sixty (60) days after approval of the Pre-Final Design.

Consent Order Attachment B-1

Map of Operable Unit 2

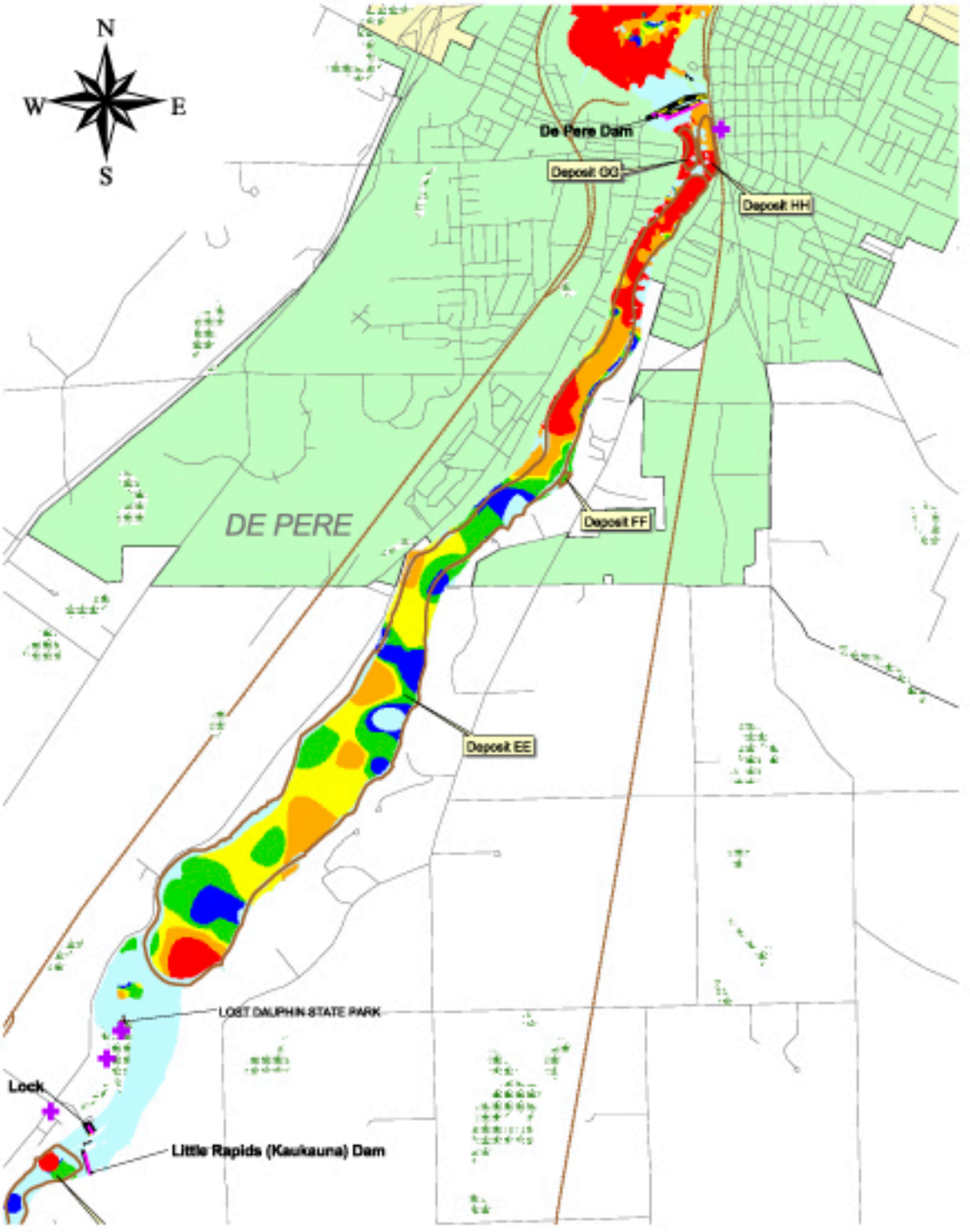


1. Basemap generated in ArcView GIS, Version 3.2, 1998, and from TIGER census data, 1990.
2. Deposit and management area data obtained from WDNR, and are included in the Fox River database.
3. Action level profiles for PCBs considered for all depth layers up to 360 cm for lower Fox River.
4. Former Deposit N shown for reference.

ThermoRetec	Natural Resource Technology	Lower Fox River & Green Bay Feasibility Study	Sediment Management Area Overview: Appleton to Little Rapids FIGURE 7-21	FS-14414-535-7-18 SCJ 3/12/01 CH

Consent Order Attachment B-2

Map of Operable Unit 3



Deposits
Possible Equipment Access
TSCA Areas
Upland Staging
Action Level Profile (ppb)
>125
>250
>500
>1,000
>5,000
Dam Locations
Bridges
Railroads
Roads
Wisconsin State Parks
Wetlands
Water
Civil Divisions
City
Township
Village

1 0 1 Kilometers

0.5 0 0.5 1 Miles

1. Basemap generated in ArcView GIS, Version 3.2, 1998, and from TIGER census data, 1990.
2. Deposit and management area data obtained from WDNR, and are included in the Fox River database.
3. Action level profiles for PCBs considered for all depth layers up to 300 cm for lower Fox River.

Natural Resource Technology

Lower Fox River & Green Bay Feasibility Study

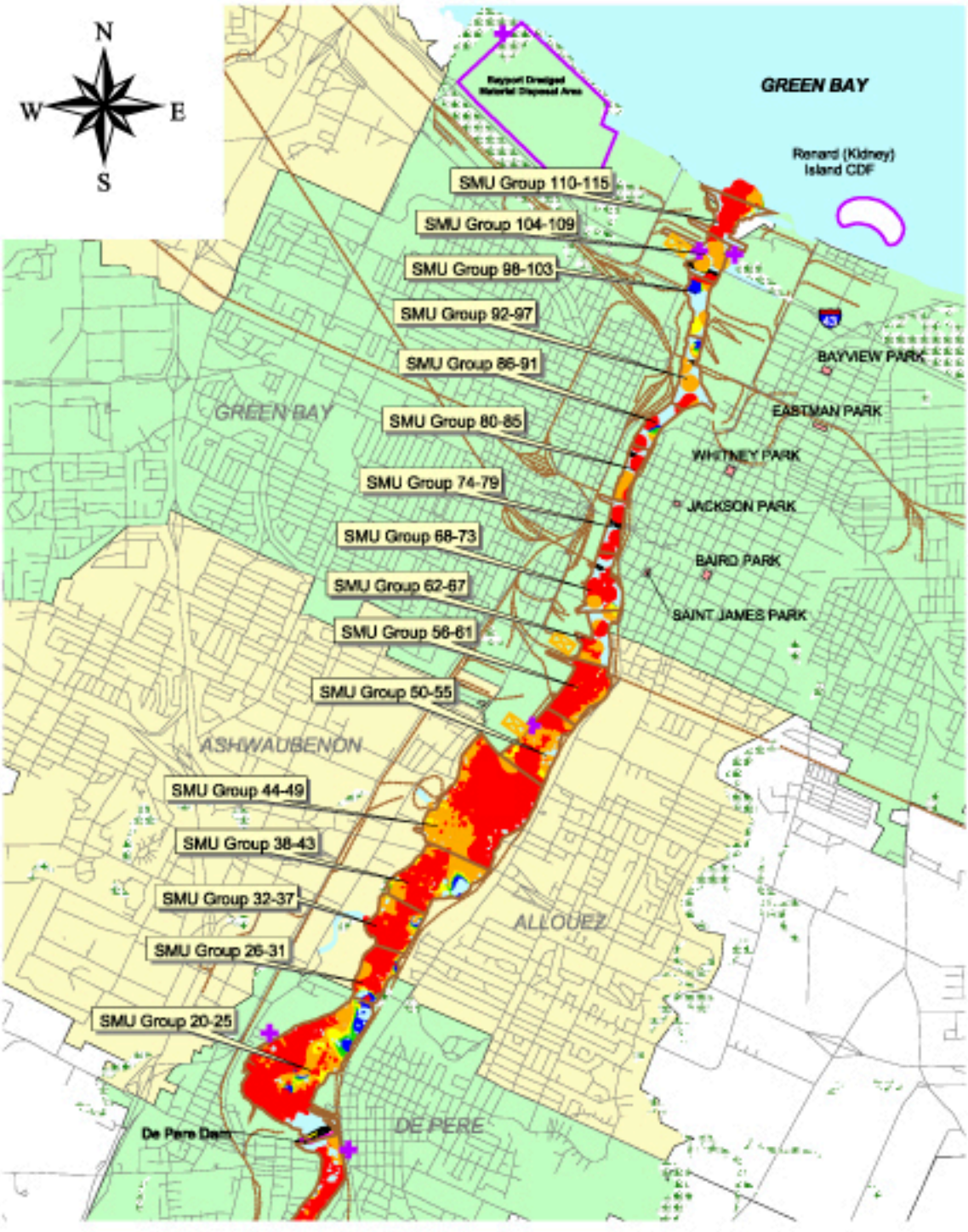
Sediment Management Area Overview: Little Rapids to De Pere

FIGURE 7-26

FS-14614-595-7-23
SGI
3/1/01
ASF

Consent Order Attachment B-3

Map of Operable Unit 4



Sediment Management Units
Possible Equipment Access
TSCA Areas
Upland Staging
Action Level Profile (ppb)
>125
>250
>500
>1,000
>5,000
Dam Locations
Bridges
Railroads
Roads
Wisconsin State Parks
Wetlands
Water
Civil Divisions
City
Township
Village

1 0 1 2 Kilometers

1 0 1 Miles

1. Basemap generated in ArcView GIS, Version 3.2, 1998, and from TIGER census data, 1998.
2. Deposit and management area data obtained from WDNR, and are included in the Fox River database.
3. Action level profiles for PCBs considered for all depth layers up to 360 cm for lower Fox River.

ThermoRetec | Natural Resource Technology | Lower Fox River & Green Bay Feasibility Study

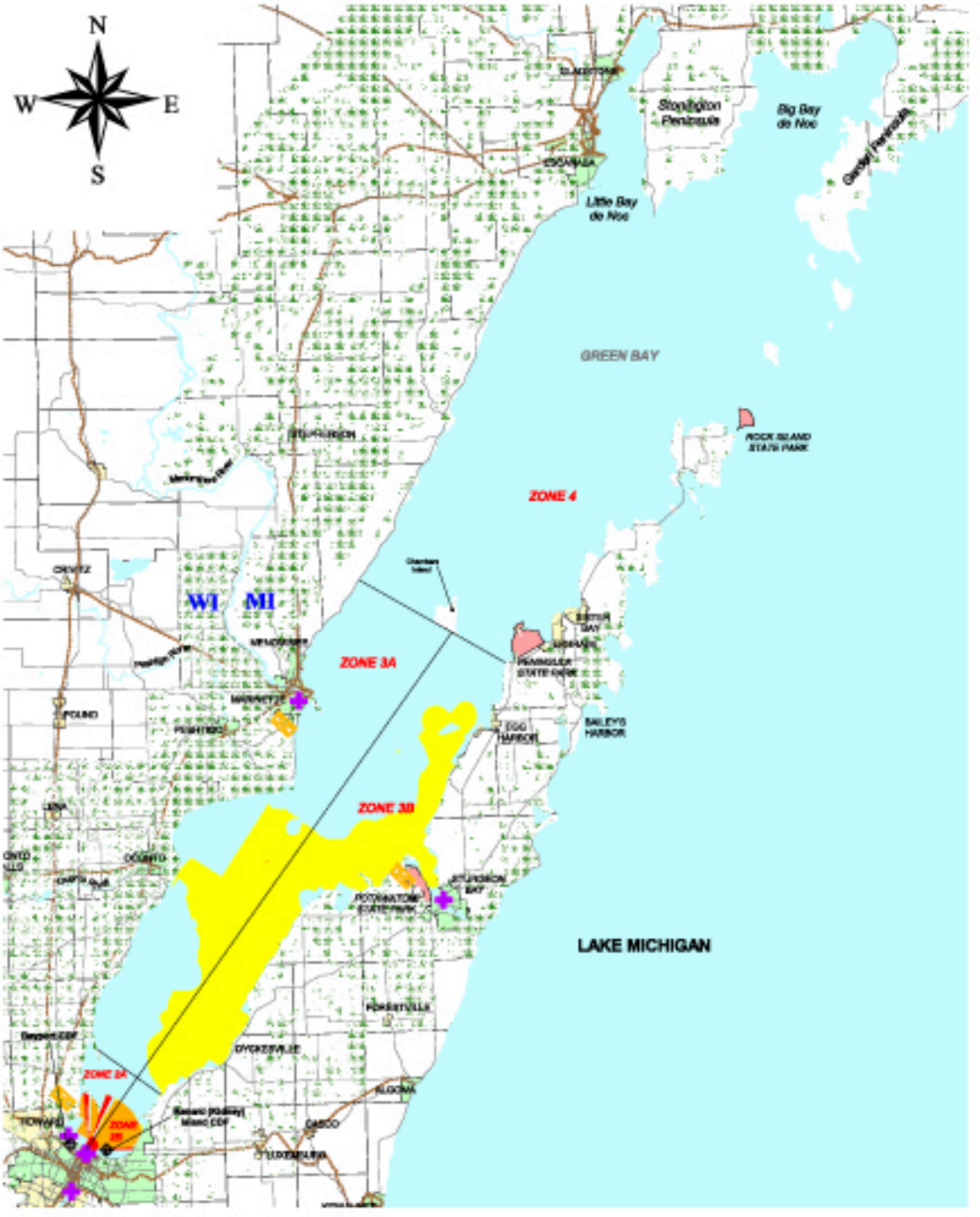
Sediment Management Area Overview: De Pere to Green Bay

FIGURE 7-36

REFERENCE:	FS-10414-035-T-31
CHECKED BY:	GCJ
REVISED:	3/15/01
APPROVED:	ASF

Consent Order Attachment B-4

Map of Operable Unit 5



1. Basemap generated in ArcView GIS, Version 3.2, 1998, and from TIGER census data, 1990.
2. Deposit and management area data obtained from WDNR, and are included in the Fox River database.
3. Action level profiles for PCBs considered for all depth layers up to +30 cm for Green Bay.

Thermoretec	Natural Resource Technology	Lower Fox River & Green Bay Feasibility Study	Sediment Management Area Overview: Green Bay	FS-14414-035-7-42
			FIGURE 7-49	

Consent Order Attachment C

Partial Funding of Remedial Design with Funds Available under API/NCR Interim Decree

1. Background and Purpose.

a. The API/NCR Interim Decree. Pursuant to the Consent Decree in United States and the State of Wisconsin v. Appleton Papers Inc. and NCR Corporation, Case No. 01-C-0816 (E.D. Wis.), Appleton Papers Inc. and NCR Corporation (collectively "API/NCR") are obligated to provide Plaintiffs up to $10 million per year over the four-year term of that Decree (up to $40 million in total), to be applied toward response action projects and natural resource damage restoration projects relating to the Site. A separate Memorandum of Agreement among the Plaintiffs and other Inter-Governmental Partners provides that approximately one-half of the $40 million payable under the API/NCR Interim Decree shall be used to implement response action projects and that the remainder shall be used to implement natural resource restoration projects. Funds under that Decree can also be used as partial funding for larger projects that are also funded in part from other funding sources. As set forth in detail in the API/NCR Interim Decree, within 21 days after Plaintiffs provide API/NCR a good faith written estimate of additional funds required for projects to be performed over the next six months, API/NCR are obligated to deposit the requested funds in a specially-established Escrow Account (the "Interim Decree Escrow Account"), subject to the $10 million annual funding limitation. Funding provided for response action projects under Subparagraph 11.a of the API/NCR Interim Decree can be further disbursed from the Interim Decree Escrow Account to EPA, to WDNR, or to any WDNR contractor or designee, for use in conducting or financing response action projects at or in connection with the Site.

b. The Response Agencies' Intention to Devote $6.5 Million from the API/NCR Interim Decree for the Remedial Design. The Response Agencies intend to devote up to $6.5 million payable under the API/NCR Interim Decree for performance of the Remedial Design for OUs 2-5, as permitted by the API/NCR Interim Decree. Consistent with that intention, the Response Agencies shall use their best efforts to have $6.5 million available for funding response action projects under the API/NCR Interim Decree deposited in the Interim Decree Escrow Account and further disbursed to Respondents, as partial reimbursement for certain Remedial Design costs to be incurred by Respondents. More specifically, as detailed by this Attachment, the Response Agencies shall use their best efforts to have up to $3.0 million disbursed to Respondents by December 2004, and to have a total of up to $6.5 million disbursed to Respondents. The Parties agree that Respondents NCR Corporation and Fort James Operating Company are authorized to receive such disbursements from the Interim Decree Escrow Account, as WDNR designees for purposes of this Attachment, based on the obligations assumed by Respondents under the Consent Order.

c. Relationship Between this Attachment and Certain Consent Order Provisions.

(1) A Respondent shall not be entitled to seek reimbursement of any Remedial Design costs under this Attachment if the Respondent elects to withdraw from the Consent Order pursuant to Consent Order Paragraph 94. If only one Respondent withdraws, the remaining Respondent may seek reimbursement for its own Remedial Design costs, as provided by this Attachment, but the remaining Respondent may not seek reimbursement for any Remedial Design costs incurred or paid by the withdrawing Respondent. If one Respondent withdraws, the plural term "Respondents" in this Attachment shall be construed to apply only to the remaining Respondent.

(2) The Respondents' obligations to make required payments and to perform the Work under the Consent Order are not contingent, conditioned, or dependent on the availability of funding or reimbursement under this Attachment. The Respondents shall be bound to comply with the Consent Order even if funding or reimbursement is not available under this Attachment, such as if: (i) API/NCR default on a payment obligation under the API/NCR Interim Decree; or (ii) the API/NCR Interim Decree is terminated.

2. Allowable RD Costs and Periodic Cost Reports.

a. Allowable RD Costs. Solely for the purpose of this Attachment, the term "Allowable RD Costs" is defined as necessary response costs incurred and paid by Respondents for Remedial Design activities that are eligible for reimbursement under this Attachment, excluding the following costs that shall not be eligible for reimbursement as Allowable RD Costs:

(1) any payments made by Respondents to the Response Agencies pursuant to the Consent Order, including, but not limited to: (i) any payments to the Response Agencies under Consent Order Section XIV (Payment of Response Costs); and (ii) any stipulated penalties paid pursuant to Consent Order Section XVII (Stipulated Penalties);

(2) attorneys' fees and costs;

(3) costs of any response activities that Respondents perform that are not required under, or specifically approved by the Response Agencies pursuant to the Consent Order, the Pre-design Sampling Plan, or the RD Work Plan;

(4) costs related to Respondents' litigation, settlement, development of potential contribution claims or identification of potentially responsible parties;

(5) Respondents' internal costs, including, but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of Respondents' employees directly performing the Remedial Design;

(6) any costs incurred by Respondents prior to the Effective Date of the Consent Order; or

(7) any costs incurred by Respondents pursuant to Consent Order Section XV (Dispute Resolution).

b. Periodic Cost Reports. To request reimbursement of Allowable RD Costs under this Attachment, Respondents shall submit Periodic Cost Reports to the Response Agencies.

(1) Each Periodic Cost Report shall be submitted jointly by both Respondents, unless one Respondent has withdrawn from the Consent Order pursuant to Consent Order Paragraph 94.

(2) Each Periodic Cost Report shall:

(i) specify the amount requested as reimbursement of Allowable RD Costs incurred and paid by Respondents during the reporting period;

(ii) provide a complete and accurate written summary of all Allowable RD Costs for which reimbursement is requested (including a summary of the work performed), certified in accordance with Subparagraph 2.b.(4) of this Attachment;

(iii) report the aggregate total amounts requested and disbursed to Respondents under this Attachment, as of the date of the Report; and

(iv) provide instructions for any payment to Respondents.

(3) In addition to the information required by the preceding Subparagraph: (i) the first Periodic Cost Report that Respondents submit under this Attachment shall provide a good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2004 (not to exceed $3.0 million); (ii) the first Periodic Cost Report that Respondents submit in 2005 shall provide a good faith estimate of the total Allowable RD Costs to be incurred and paid through June 2005 (not to exceed $6.5 million); and (iii) if a total of $6.5 million has not already been deposited in the Interim Decree Escrow Account pursuant to this Attachment by July 2005, then any Periodic Cost Report that Respondents submit after July 1, 2005 shall include a good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2005 (not to exceed $6.5 million).

(4) Each Periodic Cost Report shall contain the following certification signed by the Chief Financial Officer of a Respondent or by an Independent Certified Public Accountant retained by the Respondents:

> "To the best of my knowledge, after thorough investigation and review of the Respondents' documentation of unreimbursed costs incurred and paid for the work summarized in this report that was performed by the Respondents pursuant to the Consent Order, I certify that the information contained in or accompanying this Periodic Cost Report is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

Each Periodic Cost Report shall include a list of the cost documents that the certifying individuals reviewed in support of the Periodic Cost Report. Upon request by the Response Agencies, Respondents shall provide the Response Agencies any additional information that the Response Agencies deem necessary for review of a Periodic Cost Report.

(5) If the Response Agencies find that a Periodic Cost Report includes a mathematical error, an accounting error, costs that are not Allowable RD Costs, costs that are inadequately documented, or costs covered by a prior Periodic Cost Report, the Response Agencies will notify Respondents and Respondents shall cure the deficiency by submitting a revised Periodic Cost Report.

3. Schedule for Submission of Periodic Cost Reports.

a. First Periodic Cost Report. At any time after the final deadline for withdrawal under Consent Order Paragraph 94, Respondents may submit a Periodic Cost Report requesting reimbursement of Allowable RD Costs incurred and paid during the period of time between the Effective Date and a date specified by the Report. As provided by Subparagraph

2.b.(3) of this Attachment, Respondents first Periodic Cost Report shall also include a good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2004 (not to exceed $3.0 million).

b. Subsequent Periodic Cost Reports. Approximately three months after submission of a prior Periodic Cost Report, Respondents may submit a subsequent Periodic Cost Report requesting reimbursement of additional Allowable RD Costs incurred and paid during the period of time covered by such subsequent Report. As provided by Subparagraph 2.b.(3) of this Attachment, the first Periodic Cost Report that Respondents submit in 2005 shall also include a good faith estimate of the total Allowable RD Costs to be incurred and paid through June 2005 (not to exceed $6.5 million). Similarly, if a total of $6.5 million has not already been deposited in the Interim Decree Escrow Account pursuant to this Attachment by July 2005, then any Periodic Cost Report that Respondents submit after July 1, 2005 shall include a good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2005 (not to exceed $6.5 million).

c. Limitations on Requests for Reimbursement. The Periodic Cost Reports submitted by Respondents shall not seek reimbursement of: (i) more than $3.0 million by December 2004; or (ii) more than $6.5 million in total.

4. Requests for Funds Under API/NCR Interim Decree and Disbursements to Respondents.

a. First Request for Funds. Within 30 days of the Response Agencies' receipt of the first Periodic Cost Report under this Attachment, the Response Agencies will make an appropriate request for funds from API/NCR, and will have such funds deposited in the Interim Decree Escrow Account, as permitted by the API/NCR Interim Decree. The amount requested by the Response Agencies shall be based upon the Respondents' good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2004 (not to exceed $3.0 million).

b. Second Request for Funds. Within 30 days of the Response Agencies' receipt of the Respondents first Periodic Cost Report in 2005, the Response Agencies will make another request for funds from API/NCR (to bring the total requested to not more than $6.5 million), and will have such funds deposited in the Interim Decree Escrow Account. The amount requested by the Response Agencies shall be based upon the amount previously requested and the Respondents' good faith estimate of the total Allowable RD Costs to be incurred and paid through June 2005 (not to exceed $6.5 million).

c. Third Request for Funds. If a total of $6.5 million has not already been deposited in the Interim Decree Escrow Account pursuant to this Attachment by July 2005, then the Response Agencies will make a third request for funds under this Subparagraph 4.c based on a Periodic Cost Report that Respondents submit after July 1, 2005. Within 30 days of the Response Agencies' receipt of any such Periodic Cost Report, the Response Agencies will make another request for funds from API/NCR (to bring the total requested to not more than $6.5 million), and will have such funds deposited in the Interim Decree Escrow Account. The amount requested by the Response Agencies shall be based upon the amount previously requested and the Respondents' good faith estimate of the total Allowable RD Costs to be incurred and paid through December 2005 (not to exceed $6.5 million).

d. Disbursements to Respondents from the Interim Decree Escrow Account. Within 60 days of the Response Agencies' receipt of a Periodic Cost Report requesting reimbursement of Allowable RD Costs under this Attachment, or if the Response Agencies have

requested additional information under Subparagraph 2.b.(4) of this Attachment or a revised Periodic Cost Report under Subparagraph 2.b.(5), within 60 days of receipt of the additional information or the revised Periodic Cost Report, and subject to the conditions set forth in this Attachment, the Response Agencies shall submit a duly-executed escrow disbursement certificate directing the escrow agent to disburse the funds from the Interim Decree Escrow Account to the Respondents as reimbursement of the Allowable RD Costs. If the Respondents fail to cure a deficiency in a Periodic Cost Report that has been identified by the Response Agencies within 15 business days after being notified of, and given the opportunity to cure, the deficiency, the Response Agencies will recalculate the Allowable RD Costs eligible for reimbursement and will direct the escrow agent to disburse the corrected amount to the Respondents in accordance with the procedures in this Attachment. The Respondents may dispute the Response Agencies' recalculation under this Paragraph pursuant to Consent Order Section XV (Dispute Resolution). In no event shall funds be disbursed to Respondents from the Interim Decree Escrow Account in excess of amounts properly documented in a Periodic Cost Report accepted or modified by the Response Agencies.

5. Termination of Disbursements to Respondents. The Response Agencies' obligation to disburse funds to the Respondents under this Attachment shall terminate upon the Response Agencies' determination that Respondents: (i) have knowingly submitted a materially false or misleading Periodic Cost Report; or (ii) have submitted a materially inaccurate or incomplete Periodic Cost Report, and have failed to correct the materially inaccurate or incomplete Periodic Cost Report within 20 business days after being notified of, and given the opportunity to cure, the deficiency. The Response Agencies' obligation to disburse funds to the Respondents shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Consent Order Paragraph 72 (Work Takeover), when such assumption of performance of the Work is not challenged by Respondents or, if challenged, is upheld under Consent Order Section XV (Dispute Resolution). Respondents may dispute the Response Agencies' termination of disbursements under this Paragraph pursuant to Consent Order Section XV (Dispute Resolution).

6. Recapture of Disbursements. Upon termination of disbursements to Respondents under Paragraph 5 of this Attachment, if the Response Agencies have previously disbursed funds from the Interim Decree Escrow Account for activities specifically related to the reason for termination (*e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to the Respondents for those amounts already disbursed that are specifically related to the reason for termination, plus interest on that amount (at the relevant Superfund rate) covering the period from the date of disbursement of the funds to the date of repayment of the funds by the Respondents. Within 30 days of receipt of EPA's bill, Respondents shall pay the total amount billed to the Hazardous Substance Superfund by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" referencing the name and address of the party making payment and EPA Site/Spill Identification Number A565. Respondents shall send the check(s) to:

U.S. Environmental Protection Agency, Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

At the time of payment, Respondents shall send notice that payment has been made to the Response Agencies in accordance with Consent Order Section XXV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

Upon receipt of payment, EPA may deposit all or any portion thereof, in the Hazardous Substance Superfund, in the Fox River Site Special Account, or in another Site-specific special account within the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of the Consent Order or in any other forum or proceeding. Respondents may dispute the Response Agencies' determination as to recapture of funds pursuant to Consent Order Section XV (Dispute Resolution).